(24,690)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 443.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

MARY EDNA BEAHAM.

IN ERROR TO THE COURT OF APPEALS OF KANSAS CITY, STATE OF MISSOURI.

INDEX.

Judd & Detweiler (Inc.), Printers, Washington, D. C., November 15, 1915.

STATE OF MISSOURI, *sct:*

Be it remembered, that on the 7th day of January, 1913, there s filed in the office of the Clerk of the Kansas City Court of Apals, a transcript on appeal, in which Mary Edna Beaham was the pondent, and the New York Central and Hudson River Railroad mpany was the appellant, which said transcript is in words and ures as follows, to-wit:

Be it remembered, That on the 21st day of the regular December m, 1912, of the Circuit Court of Jackson County, Missouri, at Inpendence, the same being the 26th day of December, A. D. 1912, following proceedings were had and made of record before the norable Walter A. Powell, Judge of the Independence Division, words and figures as follows, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
EW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Now on this day plaintiff appears in person and by her attorneys swersock & Hall, and defendant appears by its attorney A. S. arley.

This cause now coming on regularly for trial, a jury having retofore been waived, this cause is submitted to the Court upon e pleadings, proofs and evidence offered by both parties and the guments of counsel and the Court now being fully advised in the emises, doth find the issues for the plaintiff and against the defendant and assesses plaintiff's damages at the sum of Seventeen Hundred Seventy One and 52/100 ($1,771.52) Dollars.

Wherefore it is ordered and adjudged by the Court that e plaintiff have and recover of and from said defendant the sum *Seventy* Hundred and Seventy One and 52/100 ($1,771.52) Dolrs, with interest thereon from this date at the rate of Six per cent r annum, together with all costs and charges in this behalf exnded and have therefor execution.

Be it remembered, That on the 21st day of the regular December rm, 1912, of the Circuit Court of Jackson County, Missouri, at ndependence, the same being the 26th day of December, A. D. 912, the following proceedings were had and made of record before e Honorable Walter A. Powell, Judge of the Independence Dision, in words and figures as follows, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY
Defendant.

Now on this day comes defendant and files application and affi
davit for appeal from the judgment in this cause to the Kansa
City Court of Appeals, which said application is by the Court sus
tained and appeal allowed to the Kansas City Court of Appeals.
Now defendant is by the Court given until on or before April 1s
1913, in which to file its Bill of Exceptions herein.

STATE OF MISSOURI,
County of Jackson, ss:

I, James B. Shoemaker, Clerk of the Circuit Court, withi
c and for the County and State aforesaid do hereby — that th
foregoing is a full, true and complete copy of judgment an
order allowing appeal, in the cause entitled Mary Edna Beahan
Plaintiff against New York Central and Hudson River Railroad Co
Defendant as the same now appears in my office.
In witness whereof, I hereunto set my hand and affix the se
of said Circuit Court, at office in Independence, this 26th day
December A. D. 1912.
[SEAL.]
JAMES B. SHOEMAKER, *Clerk,*
By R. E. MAJORS, *Deputy.*

And thereafter, to-wit, on the 15th day of April, 1913, the sa
Kansas City Court of Appeals made and entered of record the fo
lowing, to-wit:—

No. 10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL AND HUDSON RIVER R. R. Co., Appellant.

Now at this day, come the parties aforesaid, by their respect
attorneys, and upon their stipulation, the said cause is by the Co
ordered continued until the next October term of this Court.

And thereafter, to-wit, on the 19th day of September, 1913,
appellant filed its abstract of the record, which is in words a
figures as follows, to-wit:

d In the Kansas City Court of Appeals, October Term, 1913.

Number 10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Appellant.

Appeal from the Jackson County, Missouri, Circuit Court, at Independence.

Hon. W. A. Powell, Judge.

ABSTRACT OF RECORD.

A. S. Marley, Attorney for Appellant.

Filed Sep. 19, 1913. L. F. McCoy, Clerk.

1 In the Kansas City Court of Appeals, October Term, 1913.

Number 10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Appellant.

Appeal from the Jackson County, Missouri, Circuit Court, at Independence.

Abstract of Record.

Be it remembered that on the 21st day of February, 1911, there was filed in the office of the Clerk of the Circuit Court of Jackson County, Missouri, at Independence, a petition, entitled: "Mary Edna Beaham, plaintiff, vs. New York Central and Hudson River Railroad Company, defendant," which said petition was by the said clerk numbered 24,340, and, in words and figures, reads as follows, to-wit:

2 In the Circuit Court of Jackson County, Missouri, at Kansas City, March Term, 1910.

MARY EDNA BEAHAM, Plaintiff,

vs.

NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Petition.

Plaintiff for her cause of action against the defendant states that the defendant is a corporation organized and existing under and by virtue of the laws of the State of New York, and is and was at all times hereinafter mentioned engaged in the business of carrying passengers for hire; that on or about the 9th day of September, 1910, plaintiff purchased from said defendant for the regular fare, and $4.00 extra fare, a ticket entitling her to one first class passage over the railway lines of the New York Central and Hudson River Railroad Company and the Michigan Central Railroad Company to Chicago, and over the Atchison, Topeka and Santa Fe Railroad Company from Chicago to Kansas City; that plaintiff delivered or caused to be delivered to said defendant at the Grand Central Terminal in New York City, for carriage and delivery as baggage as hereinafter set out, a trunk belonging to plaintiff containing certain property of plaintiff as hereinafter more specifically set out, and that said trunk was received by said defendant from plaintiff as baggage and checked by said defendant for plaintiff after the purchase of her ticket as aforesaid, via defendant, Michigan Central and the Atchison, Topeka and Santa Fe to Kansas City, Missouri, Grand Avenue Station; that it thereupon became the duty of the defendant company to said plaintiff to safely carry said trunk and the

3 articles therein contained as baggage and to deliver, or cause to be delivered said trunk and the contents thereof to plaintiff at Kansas City, Missouri, that notwithstanding said duty, as common carrier and in disregard thereof said defendant wholly failed to carry said trunk and the contents thereof and to deliver, or cause to be delivered the same to plaintiff or to any one representing her at the Grand Avenue Station in Kansas City, Missouri, or at any other place, and has never returned or delivered, or caused to be returned or delivered the same or any part thereof to plaintiff or any one representing her; that said trunk contained the following described articles, which were the property of said plaintiff, and which were reasonably worth the sum of Fifteen Hundred Ninety-five and 58-100 ($1,598.58) Dollars, each article with the value thereof being as follows, to-wit: 1 Hat $30.00; 7 Books $3.00; 1 German Idiom Book $25.00; 2 Pr. Shoes & Fillers $12.50; 1 Hot Water Bag $2.00; 9 Pr. Silk Stockings $27.00; 3 Pr. Lisle Stockings $3.00; 1 Wool Bag $4.00; 1 Leather Case & Bottle $6.00; 1 Embroidered French Skirt $10.00; 1 Box Writing Paper $1.00; 1 Dutch Silver Bottle $9.00; 1 Traveling Pocket $2.00; 1 Address Book $25.00; 1 Si

Waistcoat $3.00; 1 Leather Book Cover $2.50; 1 Laundry Bag $1.25; 1 Silk Petticoat $10.00; 1 Leather Purse $9.00; Silver Dental Floss Case $2.00; Breakfast Cap $10.00; 1 Silk Negligee $17.00; 1 Lace & Batiste Negligee $17.50; 1 Cotton Negligee $3.00; 1 Opera Bag $20.00; 1 Handkerchief Bag $6.00; 4 Dozen Handkerchiefs $28.50; 1 Fitted Sewing Bag $5.00; 1 Gold Thimble $5.00;
4 1 Fitted Leather Bag $35.00; 2 Brushes—1 Comb $3.00; 1 Lingerie Waist $15.00; 1 Pr. Corsets $6.50; 1 Sweater $15.00; 1 Dress $90.00; 1-3 Piece Suit $135.00; 1 Dress $50.00; 1 Wrap $35.00; 1 Suit $90.00; 1 Waist Lining $2.98; 1 Waist $35.00; 1 Waist $20.00; 1 Waist $30.00; 1 Waist $7.50; 1 Umbrella $9.00; 1 Prayer Book $3.50; 1 Coin Purse $1.50; 1 Leather Watch Bracelet $2.00; 1 Leather Flask Silver Trimmed $15.00; 5 Pr. Gloves $7.50; 1 Pr. Gold Eye Glasses $5.00; 1 Silver Hair Pin Box $3.00; 1 Glass Salve Box $2.00; 1 Traveller's Brush $2.75; 1 Leather Sewing Case $1.00; 1 Cork Screw $1.00; 1 Box of Powder $1.00; 1 Pr. Nail Scissors $1.50; 3 Bolts Ribbon $2.00; 3 Yds. Veiling $1.50; 1 Aigrette $16.00; 2 Prs. Embroidered Collar & Cuffs $16.00; Belt Buckle & Belt $8.00; 1 Veil Case $5.00; 4 Yds. Lace $14.00; 4 Hat Pins $6.00; 1 Silk Scarf $8.00; 2 Hat Ornaments $7.00; 2 Combination Suits $5.00; 4 Night Gowns $29.00; 5 Chemise $25.00; 1 Jewel Case $8.00; 1 Diamond Bar Pin $250.00; 1 Gold Watch $25.00; 1 Necklace $121.60; 1 Enamel Bar $3.50; 1 Gunmetal Chain $3.00; 2 Enameled Pins $2.00; 1 String Beads $2.00; 1 Lacquer Box $14.40; 1 Mandarin Coat $41.60; 1 Prescription; 1 Diagnosis and Treatment to be followed; 1 Trunk $45.00; 1 Dozen Sachets $10.00; that plaintiff has been damaged by the failure of the defendant to perform its duty as aforesaid in the sum of Fifteen Hundred Ninety-five and 58-100 ($1,595.98) Dollars.

Wherefore, plaintiff asks judgment against defendant for said sum of Fifteen Hundred Ninety-five and 58-100 ($1,595.98)
5 Dollars with interest from the 21st day of October, 1910, and the costs of this action.

BOWERSOCK & HALL,
Attorneys for Plaintiff.

Be it further remembered that on Friday, October 11, 1912, the same being the 25th day of the September, 1912, term of the Circuit Court of Jackson County, Missouri, at Independence, the following, among other proceedings were had and held of record by the said court, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

Now, on this day, comes defendant by its attorney, and filed its second amended answer to plaintiff's petition herein, leave of court being first obtained.

Said second amended answer, in words and figures, reading as f
lows, to-wit:

STATE OF MISSOURI,
County of Jackson, ss:

In the Circuit Court within and for said County and State, Septe
ber, 1912, Term, at Independence.

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY
Defendant.

Second Amended Answer.

Now comes the New York Central & Hudson River Railroad Co
pany, the above named defendant, with leave of court first had a
obtained and files herein its second amended answer.

6 And the said defendant for its said second amended
swer admits that it now is and was at all the times and d
mentioned in the plaintiff's petition a railroad corporation organi
and existing under and by virtue of the laws of the State of N
York; and is and was at all the times and dates mentioned
plaintiff's petition engaged in the business of carrying passengers
hire and that on or about the 9th day of September, 1910, at
hour of about eleven o'clock A. M., the plaintiff, Mary Edna Beah
purchased from this defendant at its Grand Central Terminal De
in the City of New York, State of New York a coupon ticket F
D 646 C Number 539 entitling her to one first-class passage over
railroad lines of the New York Central & Hudson River Railr
from New York City, New York to Buffalo, New York, Michi
Central Railroad from Buffalo, New York to Chicago, Illinois
over the Atchison, Topeka & Santa Fe Railway from Chicago,
nois, to Kansas City, Missouri. Defendant admits that plaintiff
livered to and this defendant received at the same time and as a
of the same transaction at the said Grand Central Depot of this
fendant in the City of New York in the State of New York
carriage to and delivery at Kansas City a trunk belonging to p
tiff, this defendant then and there giving plaintiff a baggage ch
numbered 620568 therefor, and defendant admits that defen
has failed to deliver the said trunk to plaintiff at Kansas C
Missouri.

Defendant admits that plaintiff used the above said ticket
transportation over the aforesaid railroad from said City of
York to said Kansas City.

7 And defendant for further answer denies each and e
allegation in said plaintiff's petition contained, excep

as hereinbefore specifically admitted. Wherefore having answered, defendant prays to be discharged.

And the defendant, New York Central & Hudson River Railroad Company for further and second defense alleges and declares that the said ticket sold to the said plaintiff by this defendant and used by her as hereinbefore admitted was sold to the said plaintiff by this defendant and purchased by her subject to the following, among other conditions, to-wit:

"Baggage liability is limited to wearing apparel not to exceed One Hundred Dollars in value for a whole ticket, and Fifty Dollars for a half-ticket unless a greater value is declared by the owner and excess charge thereon paid at the time of taking passage."

That the said stipulation and agreement is fully set-out upon the face of the said ticket sold by the defendant herein to the said plaintiff as hereinbefore admitted.

And defendant further alleges and declares that by the acceptance and use of the said ticket by the plaintiff herein as hereinbefore shown the agreement set out became and was a contract of agreement between the plaintiff and defendant; and was from the time of the acceptance and use thereof and still is in full force and effect between this defendant and said plaintiff.

And defendant further alleges and declares that although the said agreement was at all the times hereinbefore and hereinafter mentioned and still is of full force and effect between and binding upon both plaintiff and defendant, the said plaintiff at no time prior to plaintiff's taking passage upon the said ticket declared to this defendant or any person representing this defendant that the value of the said trunk was greater than one hundred dollars, and at no time paid or offered to pay to this defendant, at or prior to the time of her taking passage upon the said ticket the excess charge for the excessive value of the said trunk.

That this defendant prior to the institution of this suit offered to pay and still offers to pay to the plaintiff herein the sum of one hundred dollars due her under and by virtue of the aforesaid agreement between the said plaintiff and this defendant.

Wherefore having fully answered the defendant asks that the court render judgment herein against it for the said sum of one hundred dollars in favor of plaintiff and asks that defendant may be permitted to have and recover of the plaintiff herein its costs herein incurred and expended.

And the defendant for a third and further answer alleges and declares that the check which this defendant gave to the said plaintiff for the trunk mentioned and described in plaintiff's petition as hereinbefore shown contained upon its face in substance the following printed notices, to-wit:

"A passenger is entitled to the free carriage of baggage not exceeding 150 pounds in weight or $100.00 in value, except that for baggage checked between points in the State of New York, the value is limited to $150.00. Excess in weight or declared value will be charged for at published tariff rates."

8

9

And defendant further alleges and declares that during the entire month of September, 1910, there was published and in full force and effect and had been in full force and effect since April, 1910, and on file, and had been on file since March, 1910, in the office of the Interstate Commerce Commission of the United States, a local and joint Inter-State tariff of excess baggage rates providing terms and conditions for the receiving and carrying baggage over defendant's lines of railroad, as follows:

Section 4—Free Baggage Allowance.

(Weight and Value.)

(*a*) 150 pounds of baggage not exceeding $100.00 in value will be carried free in baggage cars for each adult passenger and 75 pounds not exceeding $50.00 in value for each child traveling on a half-ticket (unless a lower limit of value is shown in tariff announcing fares), except as follows:

(*b*) On baggage carried between two points in New York State not requiring transit through another State, the limit of value of baggage carried free will be $150.00 for each adult passenger and $75.00 for each child traveling on a half-ticket.

(*c*) These companies will not accept any greater liability than $50.00 for baggage belonging to one passenger when checked on a commutation or family ticket.

(*d*) No baggage will be transported in connection with low rates excursion tickets where tariff announcing fares so states.

(*e*) On Around-the World and Trans-Pacific tickets (not including Colonist, Summer Excursions, Convention or other reduced fare tickets to the Pacific Coast, in connection with steamship orders beyond) 350 pounds of baggage will be checked free for each adult passenger and 175 pounds for each child presenting valid transportation subject to same limit value as ordinary baggage. Baggage will be checked only by baggagemen at stations and only on presentation of railway ticket and accompanying order or ticket covering steamship transportation but baggage will not be checked beyond the ports of San Francisco, Seattle, Tacoma and Vancouver (according to route). Officers of the U. S. Army or Navy en route to the Orient who use Government Transports from the Pacific Coast will be entitled only to 150 pounds of baggage free."

Section 6 (Excess Value).

(*a*) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100.00 in value as for 50 pounds excess weight adding enough to make rate end in 0 or 5.

(*b*) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the company will not accept any greater liability than the amounts stated in section 4 paragraph (*a*), (*b*) and (*c*).

11 And defendant further alleges and declares that notwithstanding the said joint, local and Inter-State Commerce Law Tariff was during the entire month of September, 1910, in full force and effect, the plaintiff did not at or prior to the delivery of her said trunk to this defendant, and at or prior to her taking passage on the ticket as hereinbefore mentioned set out or declare to this defendant or any person representing this defendant that the value of the said trunk exceeded $100.00 and did not then and there pay or offer to pay to this defendant on the value of the said trunk in excess of $100.00 that was in the said tariff provided.

And defendant further alleges and declares that for defendant to pay to the plaintiff any moneys as and for the value of said trunk in excess of the said sum of $100.00 would be violative of Inter-State Commerce Law of the United States and would thereby subject the plaintiff and this defendant to punishment for said violation of said Inter-State Commerce Law as is by said Law provided.

And for fourth and further defense alleges and declares that during the enitre month of September, 1910, there was published and in full force and effect and had been in full force and effect since April, 1910; and on file, and had been on file since March, 1910, in the office of the Inter-State Commerce Commission of the United States local and joint Interstate Tariff of excess baggage rates and which said tariff defined that constituted baggage that would be accepted and carried as baggage over the lines of the defendant railroads as follows, to-wit:

12 Section 9 (Baggage Defined).

(*a*) Baggage consists of wearing apparel, toilet articles and similar effects in actual use and necessary and appropriate for the wear, use, comfort and convenience of the passenger for the purposes of the journey, and not intended for other persons, nor for sale.

(*b*) Money, jewelry, negotiable papers and such valuables, should not be enclosed in baggage to be checked, but carried by the owner or forwarded by Express. The carriers party to this tariff will not be responsible for such articles in baggage.

(*c*) Baggage must be enclosed in receptacles provided with handles and sufficiently strong to withstand necessary handling—such as trunks, valises, telescopes, suit cases and leather hat boxes.

(*d*) Receptacles when not securely locked will not be received or checked except with the understanding that no liability will be assumed for loss of articles therefrom.

And defendant further alleges and declares that notwithstanding that said local and joint Interstate Commerce Law Tariff, defined what constituted baggage that would be accepted as baggage from passengers using and proposing to use railroad lines of this defendant and was as hereinbefore set forth during the entire month of September, 1910, in full force and effect, the plaintiff did not at or prior to the delivery of her said trunk to this defendant, and at or prior to her taking passage on the ticket sold to her as hereinbefore

mentioned, advise or inform this defendant or any person represe
ing this defendant that the said trunk contained jewelry,
13 any articles other than wearing apparel, toilet articles
similar effects in actual use and necessary and appropri
for the wearing, use, comfort and convenience of the plaintiff for
purposes of the journey over the railroad lines of this defendant.

And defendant further alleges and declares that for defendant
pay to plaintiff any money as and for the value of any jewelry, ne
tiable papers and such valuables would be in violation of the In
state Commerce Law of the United States and would thereby sub
this defendant to punishment for such violation of the said In
state Commerce Law as is by the said Law provided. That this
fendant did prior to the institution of this suit offer to pay and d
now offer to pay to this plaintiff the sum of $100.00 for her bagg
comprising wearing apparel, toilet articles and similar effects
actual use and necessary and appropriate for the wear, use, com
and convenience of the plaintiff for the purposes of the journey,
not intended for any other person or for sale, and that for this
fendant to pay to plaintiff in excess of $100.00 therefor would b
violation of the Interstate Commerce Law of the United States
would thereby subject this defendant to punishment for such vi
tion of said Inter-state Commerce Law as is by said law provided.

Wherefore, the defendant asks that the plaintiff take judgm
against the defendant for the sum of one hundred dollars only
that this defendant herein have and recover of the plaintiff he
its costs herein incurred and expended.

14 And for fifth and further defense defendant alleges
declares that during the entire month of September, 19
there was published and in full force and effect and had been
full force and effect since December 1st, 1909, and on file and
been on file since October 30th, 1909, in the office of the Inter-s
Commerce Commission of the United States joint passenger t
No. 53 effective over the New York Central & Hudson River R
way and Michigan Central Railway and Atchison, Topeka & Sa
Fe Railway, which said Joint Passenger Tariff provided for and fi
the rate for first class passage from New York City in the Stat
New York to Kansas City in the State of Missouri over the said
York Central & Hudson River Railway, the said Michigan Cen
Railway and Atchison, Topeka & Santa Fe Railway at the price
sum per passenger of thirty dollars and seventy-five cents. Said ti
in each instance to be limited for passage to three days; and the
joint passenger tariff did further provide that the excess baggage
per hundred pounds from New York City in the State of New Y
to Kansas City in the State of Missouri by the said railway
should be the sum of five dollars and fifteen cents for each one h
dred pounds of baggage in excess of the usual and customary al
ance of one hundred and fifty pounds of free baggage. That
and regulations of the said joint passenger tariff No. 53 pro
among other things as follows:

No. 3. Baggage. 150 pounds of baggage will be checked fre

each whole ticket and 75 pounds on each half ticket. No
15 single piece of baggage weighing more than 250 pounds will be checked. Baggage must be checked through to destination of ticket, except that baggage may be checked to stop over point as authorized in Rule 31.

No. 4. Excess Baggage. On baggage weighing over 150 pounds on each whole ticket and 75 pounds on each half ticket charge will be made for the excess weight at the excess baggage rate per 100 pounds shown herein. In computing excess baggage charges sufficient will be added when necessary to make same end in 0 or 5. The minimum excess baggage rate will be 15 cents per hundred pounds and the minimum collection for any shipment will be 25 cents.

No. 6. Time Limits. The time limits shown herein include the date of sale. For example, the time limit to Kansas City is 3 days, therefore a ticket sold on the 1st would be punched to expire on the 3rd.

And defendant further alleges and declares that by reasons of the rules, regulations, provisions and conditions for the carrying of excess baggage by the defendant from New York City in the State of New York to Kansas City in the State of Missouri over the said New York Central & Hudson River Railway, Michigan Central Railway and Atchison, Topeka & Santa Fe Railway as set forth in the third and fourth defenses hereinbefore set out, it became and was the duty of the plaintiff on the said 9th day of September, 1910, when she had
her baggage checked over the aforesaid through lines from
16 New York City in the State of New York to the City of Kansas City in the State of Missouri to have notified the agent and representatives of this defendant of the value of the said baggage, and that the said sum was in value in excess of the sum of $100.00 and should have then and there paid or offered to pay to the agent and representatives of this defendant for the transportation of such baggage over the aforesaid through lines of traveling from said City of New York to the said City of Kansas City the excess charge therefore as provided in the schedule hereinbefore set out. That the plaintiff herein failed and neglected to so notify the defendant, its agent and representatives of the value of said trunk and if this defendant should pay to plaintiff any money as and for the value of said trunk in excess of the sum of $100.00 it would be violating the Inter-State Commerce Law of the United States and would thereby subject this plaintiff and this defendant to punishment for such violation of said Inter-State Commerce Law as is by said law provided.

Wherefore, the defendant asks that the plaintiff take judgment against the defendant for the sum of one hundred dollars only and that this defendant herein have and recover of the plaintiff herein its costs herein incurred and expended.

MARLEY & GROVER,
Attorneys for Defendant.

Be it further remembered that on October 19, 1912, there was fi
in the office of the clerk of the Circuit Court of Jackson County, M
souri, at Independence, in cause entitled: "Mary Edna B
17 ham, plaintiff, vs. New York Central and Hudson River Ra
road Company, a corporation, defendant," and numbe
24,340 the plaintiff's reply to defendant's second amended answ
which said reply, in words and figures, reads as follows, to-wit:

In the Circuit Court of Jackson County, Missouri, at Independen
September Term, 1912.

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Corporation, Defendant.

Plaintiff's Reply to Defendant's Second Amended Answer.

Now comes Mary Edna Beaham, the plaintiff in the above entitl
cause, and for reply to the first defense set up in defendant's seco
amended answer, says:

That she does not know and has no means of knowing wheth
or not the ticket purchased by her from the defendant was what t
defendant described in its answer as a coupon ticket "Form 'D' 6
'C' Number 539," and she, therefore, denies that the ticket purchas
by her was a coupon ticket "Form 'D' 646 'C' Number 539."

For reply to the second defense set up in defendant's seco
amended answer, plaintiff says:

That she does not know and has no means of knowing wheth
the ticket purchased by her from defendant had set out upon the fa
thereof the following words: "Baggage liability is limited to weari
apparel not to exceed $100.00 in value for a whole ticket, and $50.
for a half ticket, unless a greater value is declared by t
18 owner and excess charge thereon paid at the time of taki
passage," and she, therefore, denies that the ticket she p
chased had said words set out upon the face thereof.

That plaintiff denies that she entered into any contract, or agr
ment, with defendant purporting to limit its liability as set out, a
specifically denies that there was any consideration passing from
fendant to plaintiff, or any consideration whatever for any such co
tract, or agreement.

For further reply to defendant's second defense plaintiff stat
that Section seven (7) of the Hepburn Bill (Act of June 29th, 190
Chapter 3591) amending Section twenty (20) of the Interstate Co
merce Act (34 United States Statutes at large, 595) provides that a
common carrier, railroad or transportation company receiving pr
erty for transportation from a point in one state to a point in
other state shall issue a receipt or bill of lading therefor, and sh
be liable to the lawful holder thereof for any loss, damage, or inju

to such property caused by it, or by any common carrier, railroad, or transportation company to which said property may be delivered, or over whose line, or lines, such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed, provided; that nothing in this section shall deprive any holder of such receipt or bill of lading, of any remedy, or right of action, which he has under the existing law; that the baggage referred to in the petition herein was received by the defendant for transportation from a point in one state, to-wit; the City of New York, State of New York, to a point in another state, to-wit; the City of Kansas City, State of Missouri, and that the contract, or agreement, alleged in the answer does not exempt said defendant from liability for the loss of said baggage, and constitutes, under the terms of said statute, no defense to this action.

That plaintiff denies that the defendant prior to the institution of this suit, offered to pay her one hundred ($100.00) dollars, or any other sum.

For reply to the third defense set up in defendant's second amended answer, plaintiff says:

That she denies that the check, which defendant gave to her, contained upon the face thereof the printed notice set out in the amended answer.

That plaintiff does not know and has no means of knowing whether or not there was published in the office of the Interstate Commerce Commission of the United States, the alleged local and joint interstate tariff of excessive baggage rates set out in the second amended answer, and plaintiff, therefore, denies that there was published and in full force and effect, any such alleged local and joint interstate tariff of excess baggage rates.

That plaintiff denies that it would be in violation of the Interstate Commerce Law of the United States and would subject the plaintiff and defendant to punishment for the violation of said law for defendant to pay any moneys as and for the value of said trunk, in excess of one hundred dollars ($100.00).

That plaintiff denies that the defendant prior to the institution of this suit, offered to pay her one hundred dollars ($100.00), or any other sum.

For reply to the fourth defense set up in the defendant's second amended answer, plaintiff denies each and every allegation therein contained.

For reply to the fifth defense set up in the defendant's second amended answer, plaintiff denies each and every allegation therein contained.

Wherefore, plaintiff asks judgment in accordance with the prayer of her petition.

BOWERSOCK, HALL & HOOK,
Attorneys for Plaintiff.

Be it further remembered that on Thursday, November 21, 1912, the same being the fifty-first day of the September, 1912, term of the

Circuit Court of Jackson County, Missouri, at Independence, the following, among other proceedings, were had and held of record by said court, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, a Corporation, Defendant.

Now, on this day, come the parties hereto by their respective attorneys, and file stipulation waiving a jury in the trial of this cause. It is therefore ordered by the court that, in accordance with the said stipulation, a jury be, and the same is hereby waived in the trial of this cause.

And be it further remembered that on Thursday, December 26, 1912, the same being the 21st day of the December, 1912.
21 term of the Circuit Court of Jackson County, Missouri, at Independence, the following, among other proceedings, were had and held of record by said court, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Now, on this day, plaintiff appears in person, and by her attorneys, Bowersock and Hall, the defendant appears by its attorney, A. S. Marley.

This cause now coming on this day for trial, a jury having heretofore been waived, this cause is submitted to the court upon the pleadings, proofs and evidence offered by both parties, and the arguments of counsel, and the court now being fully advised in the premises, doth find the issues for the plaintiff and against the defendant, and assesses plaintiff's damages at the sum of seventeen hundred seventy-one and 52-100 dollars ($1,771.52).

Wherefore, it is ordered and adjudged by the court that plaintiff have and recover of and from said defendant the sum of seventeen hundred seventy-one and 52-100 dollars ($1,771.52), with interest thereon from this date at the rate of six per cent (6%) per annum, together with all costs and charges in this behalf expended, and have therefor execution.

Be it further remembered that thereafter, and on Thursday, December, 26, 1912, the same being the 21st day of December, 1912, term of the Circuit Court of Jackson County, Missouri, at In-
22 dependence, the following, among other proceedings, were had and held of record by said court, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
W YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

Now, on this day, comes defendant by its attorney, and files mo- for new trial of this cause, which said motion for new trial of this se is by the court taken up and fully heard and considered, and the court overruled, to which ruling of the court defendant ex- ts.

The said motion for new trial being in words and figures as fol- s, to-wit:

TE OF MISSOURI,
County of Jackson, ss:

the Circuit Court within and for said County and State, December, 1912, Term, at Independence.

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
V YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

Motion for New Trial.

Now comes the New York Central & Hudson River Railroad Com- y, the above named defendant and moves the court to set aside its ing of facts herein and grant this defendant a new trial, and as nds for said motion assigns the following:

The finding of facts is contrary to the evidence.

. The finding of facts is contrary to law.

I. The finding of facts is contrary to the law and the evidence.

V. Upon all the evidence the finding of facts should have been for the defendant upon its answer.

V. Upon all of the evidence the damages assessed against the defendant should have been one hundred dollars, only.

I. The court erred in admitting incompetent evidence offered e plaintiff over the objection of the defendant.

II. The court erred in excluding competent evidence offered e defendant.

III. The court erred in giving the declaration of law number 1, l by the plaintiff over the objection of defendant.

. The court erred in giving the declaration of law number 2, l by the plaintiff over the objection of defendant.

The court erred in giving the declaration of law number 3, l by the plaintiff over the objection of the defendant.

XI. The court erred in giving the declaration of law number 4, asked by the plaintiff over the objection of the defendant.

XII. The court erred in refusing to give defendant's declaration of law number I.

XIII. The court erred in refusing to give defendant's declaration of law number II.

XIV. The court erred in refusing to give defendant's declaration of law number III.

XV. The court erred in refusing to give defendant's declaration of law number IV.

XVI. The court erred in refusing to give defendant's declaration of law number V.

24 XVII. The court erred in refusing to give defendant's declaration — law number VI.

XVIII. Under the law and the evidence, the action of the court in awarding the plaintiff damages in excess of one hundred dollars was erroneous.

XIX. Upon all the evidence the finding of facts should have been for the defendant on the issues of facts presented by defendant's answer.

XX. Upon all the evidence the finding of facts against the defendant on defendant's answer is contrary to the law.

A. S. MARLEY,
Attorney for Defendant.

Be it further remembered that thereafter, and on Thursday, December 26, 1912, the same being the 21st day of December, 1912, term of the Circuit Court of Jackson County, Missouri, at Independence, the following, among other proceedings were had and held of record, by said court, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Now, on this day, comes defendant, and files application and affidavit for appeal from the judgment in this cause to the Kansas City Court of Appeals, which said application is by the court sustained, and appeal allowed to the Kansas City Court of Appeals.

Now, defendant is by the court given until on or before April 1, 1913, in which to file its bill of exceptions herein.

25 The said affidavit for appeal is in words and figures as follows, to-wit:

STATE OF MISSOURI,
County of Jackson, ss:

In the Circuit Court Within and for said County and State, December, 1912, Term, at Independence.

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant.

Affidavit for Appeal.

STATE OF MISSOURI,
County of Jackson, ss:

Albert S. Marley, of lawful age, being first duly sworn upon his oath states that he is the agent of the New York Central & Hudson River Railroad Company, a corporation, the defendant in the above entitled cause number 24340, now pending in the Circuit Court of Jackson County, Missouri, at Independence, wherein the said Mary Edna Beaham is plaintiff, and the said New York Central & Hudson River Railroad Company is defendant; and the affiant as such agent of and for the said New York Central & Hudson River Railroad Company upon his oath further states that the appeal now taken by the said New York Central & Hudson River Railroad Company from the judgment rendered against it by the said Circuit Court in favor of the said Mary Edna Beaham in the above entitled cause is not made for vexation or delay but because the affiant believes that the appellant, New York Central & Hudson River Railroad Company is aggrieved by said judgment of the said court.

ALBERT S. MARLEY.

Subscribed and sworn to before me this 26th day of December, A. D. 1912.

JAMES B. SHOEMAKER,
Clerk Circuit Court Jackson County, Missouri,
[SEAL.] By N. M. SHORES, *Deputy.*

Be it further remembered that thereafter, and on Monday, January 6, 1913, the same being the 28th day of the December, 1912, Term of the Circuit Court of Jackson County, Missouri, at Independence, the following, among other proceedings, were had and held of record by said court, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Now, on this day comes defendant by its attorney, and files appeal bond herein in the sum of four thousand dollars ($4,000.00), with New York Central and Hudson River Railroad Company as principal, and National Surety Company as surety thereon, which said bond is by the court approved in open court.

Be it further remembered that thereafter, on Saturday, March 1, 1913, the same being the 74th day of the December, 1912, Term of the Circuit Court of Jackson County, Missouri, at Independence, the following, among other proceedings, were had and held and made of record by said court, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

27 Now, on this day, comes defendant, by its attorney, and, upon good cause being shown to the court,

It is ordered by the court that the time heretofore given defendant in which to file its bill of exceptions herein, be, and the same is hereby extended to on or before the first day of the June Term, 1913, of this court.

Be it further remembered, that thereafter, to-wit, on Wednesday, May 14, 1913, the same being the 54th day of the March Term, 1913, of the Circuit Court of Jackson County, Missouri, at Independence, the following, among other proceedings, were had and held and made of record by said court, to-wit:

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Now, on this day, comes defendant, by its attorney, and, upon good cause being shown,

It is ordered by the court that the time heretofore given defendant in which to file its bill of exceptions herein be, and the same is hereby extended to on or before the first day of the September Term, 1913, of this court.

Be it further remembered, that thereafter, to-wit, on Thursday, he 4th day of September, A. D. 1913, the same being the 35th day f the June, 1913, term of the Circuit Court of Jackson County, Mis- ouri, at Independence, the following, among other proceedings, ere had and held and made of record by said court, to-wit:

8

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
EW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Now, on this day, comes the defendant, and presents to the court s bill of exceptions, and prays that the same may be settled, signed nd sealed and made a part of the record in this cause; and,

Thereupon, the said bill of exceptions were settled, signed and aled by the judge of the court; and,

It is by the court ordered that the said bill of exceptions be, and ie same is filed and made a part of the record in this cause.

The said bill of exceptions in words and figures, reading as follows, -wit:

n the Circuit Court of Jackson County, Missouri, at Independence, September Term, 1912.

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
EW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Be it remembered, That on Saturday, November 30th, 1912, and said September Term of said Circuit Court, the above entitled use coming on to be heard before the court, Honorable Walter A. well, judge, presiding, jury having been waived, plaintiff appear- g by Bowersock & Hall, her attorneys, and defendant appearing A. S. Marley, Esq., its attorney, the following proceedings were d:

Plaintiff, to sustain the issues upon her part, offered evidence as lows:

MARY E. BEAHAM, plaintiff, called as a witness in her own behalf, having been duly sworn, testified as follows:

Direct examination by Mr. Hall:

Q. State your name, please.
A. Mary E. Beaham.
Q. Where do you reside, Miss Beaham?
A. 2940 Troost Avenue, Kansas City, Missouri.

Q. How long have you lived in Kansas City?
A. About twelve years.
Q. Are you the daughter of Thomas G. Beaham, deceased?
A. I am.
Q. Your father during his lifetime was owner of all the stock the Faultless Starch Company?
A. Yes.

Mr. Marley: That's immaterial.
Objection overruled; to which ruling of the court defendant at time duly excepted.
Mr. Marley: If the court please, in view of the fact that we ad our liability and tender a hundred dollars, I presume there's no cessity of going into the entire transaction, but the witness mi just give testimony as to the articles that were in her trunk and th value. We, of course, admit we received a trunk at the Grand T minal Station, New York City, and admit the trunk was lost, it's just a question of the extent of our liability and also a quest of the contents of the trunk. Of course, under our theory it's material what the contents of the trunk might be so far as it wo be in excess of one hundred dollars was concerned. We h
30 tendered and offer to pay the hundred dollars and they fuse to take it.
Mr. Hall: We only want to show the character of the jour for the purpose of showing the articles in the trunk were necess and proper articles of baggage. Of course, if there is no quest on that we will omit that feature of the case.
The Court: I expect you better prove it up. The objection be overruled.
To which ruling of the court defendant at the time duly cepted.

Q. Where were you during the summer of 1910?
A. I was in Europe.
Q. When did you go abroad?
A. The middle of May.
Q. What countries did you visit?
A. Germany, Austria, France, England.
Q. What was the purpose of your trip?
A. See some doctors; I wasn't well.
Q. Who were they?
A. I went first to Doctor Kraus in Carlsbad, Austria, and he me to Doctor MacKenzie of London.
Q. When did you sail for home?
A. The latter part of August—middle of August, I think landed about the last of August.
Q. 1910?
A. 1910.
Q. When did you arrive in New York?
A. It was about the 25th or 6th of August.
Q. Did you come directly to Kansas City after your arriva New York?

A. I went to Rye, New York, to visit a friend.

31 Q. How long did you remain in Rye?

A. About ten days.

Q. When did you start for home?

A. I left Rye September 9th, 1910.

Q. Did you check your trunk from Rye to the Grand Central Station, New York?

A. I did.

Q. What time did you reach New York?

A. Well, between ten thirty and ten forty-five.

Q. What station did you come into?

A. Grand Central Terminal, New York City.

Q. What did you do upon arrival in New York City?

A. I checked my hand baggage at the check stand, I bought a ticket to Kansas City, I then checked my trunk, asking to have it checked to Grand Avenue Station in Kansas City.

Q. Is this the check that was given you (showing witness card)?

A. Yes.

Mr. Hall: I offer that in evidence.

Said card was here marked by the stenographer Exhibit "1," and is in words and figures as follows, to-wit:

"New York Central and Hudson River Railroad.

(New York Central Lines) Interline Duplicate.

From Grand Central Terminal
To Kansas City, Mo. Grand Ave.

Route:	Junction Points:
N. Y. C. & H. R. R. R.	To.....
Mich. Cent.	To.....
Santa Fe	To.....

See conditions on back. Value not stated. Series One 620,568."

32 On the back thereof is the following:

"Notice to Passengers.

Baggage consists of a passenger's personal wearing apparel and liability is limited to $100 (except a greater or less amount is provided in tariffs) on full fare ticket, unless a greater value is declared by owner at time of checking and payment is made therefor.

Receptacles which are not securely locked will be accepted for checking only at owner's risk of loss of contents by pilfering or otherwise.

Single pieces weighing more than 250 pounds will not be forwarded.

If excess or storage charges are not paid at checking station, they will be collected at destination.

If this check is issued on order to call for baggage, it is und stood that the transfer company assumes no liability until it tak possession of said property at address given and issues its recei This company assumes no liability until the baggage comes into possession.

To avoid storage charges claim baggage at once.

W. M. SKINNER,
General Baggage Agent, Albany, N. Y."

Q. Did you leave New York for Kansas City the same day?
A. In the afternoon.
Q. At what time?
A. Four thirty, the Wolverine train.
Q. When did you reach Chicago?
A. Three thirty the following afternoon.
33 Q. When did you reach Kansas City?
A. The morning of the eleventh at eight twenty.
Q. Did you leave Chicago the same evening of the afterno that you got there?
A. Yes, sir.
Q. Did you make inquiries for your trunk that day and the ne succeeding days?
A. In Kansas City?
Q. In Kansas City.
A. I did.

Mr. Marley: We admit the trunk was lost.

Q. Was it ever delivered to you?
A. It was not.
Q. Have you a list of the articles your trunk contained?
A. I have.
Q. Is that the list (showing witness paper)?
A. Yes, sir; it is.
Q. When was that list made?
A. It was made when the railroad asked me to file a statement the value of my trunk.

By Mr. Marley:

Q. The value or contents or both?
A. Well, I don't remember, they asked me to file a statement.

By Mr. Hall:

Q. Can you by referring to that list refresh your recollection suf ciently to tell the court the articles which your trunk contained?
A. I can by reading this list.

Mr. Marley: I will say this. We have looked that over and you say on oath that is the contents of your trunk I will not obje to it from the fact it is merely a list. I will take it for granted it merely a list. You look it over and make sure it is the list you mad up and if you will swear it is an accurate list I will not ask you testify from your memory alone.

34 The Witness: I know this is the list.

Mr. Hall: I offer that list in evidence in view of the admission made by counsel for the defendant.

Said paper was here marked by stenographer Exhibit "2," and is in words and figures as follows, to wit:

"Total—$1,598.58. Claim No. —.

Claim for Loss or Damage to Baggage.

—— —, 190-.

Mr. —— ——, General Baggage Agent, ——.

DEAR SIR: The following certified claim is respectfully submitted:

1. Owner of baggage (full name) Mary Edna Beaham.
2. Post Office address 2940 Troost Ave. Kansas City, Mo.
3. Where was ticket bought? New York City.
4. From what railroad company? New York Central.
5. On what date? September 9th, 1910.
6. Was ticket first or second class? First.
7. Destination of ticket? Kansas City, Mo.
8. Number and street where baggage was packed? Milton Point, Rye, N. Y.
9. By what conveyance was this baggage taken to railway station from which shipped? Express wagon.
10. At what place was this baggage checked? Rye, N. Y. Sept. 8th and re-checked on morning of 9th in New York to Kansas City.
11. On what date?

35 12. For what place was it checked? New York & re-checked to Kansas City.

13. Give number and full description of checks. 620,568 N. Y. Central.
14. Route (that is the roads over which traveled) N. Y. Cent—Mich. Central—Santa Fe.
15. Was baggage re-checked; if so, where? New York.
16. Give minute description of outside appearance of baggage. Small innovation.
17. If trunk, box or valise, give color. Green.
18. Did it show much wear or usage? No.
19. Was it covered by zinc, leather, canvas or what? Canvas—innovation.
20. Roped or strapped?
21. Was the box, trunk, valise, locked and in order when checked? Yes.
22. Did you personally pack this baggage? Yes.
23. If not, who did; have you full confidence in the integrity of that person? (important.)
24. How long after packing before you locked it? Immediately.
25. How long was it out of your sight after it was packed until checked?
26. In whose care was it left during the interval? (Give full name and post-office address).

27. Was it checked the day it arrived at the station? Yes.
28. Did you personally attend to the checking? Not in Rye, n
hostess's servant checked it there and I personally rechecked it
New York.
29. If not, who did? Servant of my hostess in Rye—I persona
in N. Y.
30. Did you see the baggage while en route? No.
36 31. If so, state where.
32. Was it in good or bad order?
33. Did you remove anything from baggage by permission?
34. If so, when, where and by whose permission?
35. Where did you last use or see the missing articles?
36. Did you see or examine the missing articles at the time or af
examination by custom's officers?
37. At what time and place did you first present your check
the baggage? K. C. Mo., Sept. 11th.
38. How soon after arriving at your destination did you ap
for your baggage?
39. By whom was it taken from the station?
40. Where was it delivered to you?
41. In what condition was it when received by you?
42. How long after that was it before you discovered the loss
damage?
43. Was baggage pilfered, damaged or lost? Lost.
44. If pilfered, for what amount? $—.
45. If damaged, for what amount? $—.
46. If lost, at what do you estimate the value? $—.
47. Was your baggage insured, and if so for how much and w
what Co.? No.
48. How many tickets did you hold? One.
49. In what business are you engaged and by whom employed?
50. Do you work on salary or commission, and how much?
Carefully fill out blank on opposite page.
37 This statement and the values placed upon the artic
enumerated are correct to the best of my knowledge a
belief.
(Sign here.)

MARY EDNA BEAHAM,
Owner of Baggage

Post-office address 2940 Troost Ave., Kansas City, Mo.

Subscribed and sworn to before me this 17th day of October, 19
[SEAL.] G. T. AUGHINBAUGH,
Notary Public

My commission expires 4-10-11.

38

Itemize each article.	How long in use.	Cost.	Damage.	Remarks.
1 hat	3 mths.	$25.00	$25.00	$30. Chicago—May.
7 books	.....	3.00	3.00	Europe—summer.
1 German idiom book	.....	25.00	25.00	Containing 1000 idioms I had written myself.
2 pr. shoes & fillers	3 mths.	12.50		
1 hot water bag	new	2.00	12.50	May, 1910—K. C.
9 pr. silk stockings (6 new 3 worn some)	.....	27.00	2.00	N. Y. Sept.
3 pr. lisle stockings	3 mths.	3.00	27.00	May, 1910—K. C. & N. Y.
1 work bag	new	4.00	3.00	May, 1910—K. C. & N. Y.
1 leather case & bottles	.....	6.00	4.00	Sept. 1910, N. Y.
1 embroidered French skirt	3 mths.	10.00	6.00	Summer 1910, Dresden.
1 box writing paper	.....	1.00	10.00	K. C.
1 Dutch silver bottle	.....	9.00	1.00	K. C. 1910.
1 traveling pocket	3 mths.	2.00	9.00	Holland 1908.
			2.00	May 1910, K. C.

39

1 address book	.....	25.00	25.00	Addresses I had been many years collecting & cannot get again.
1 padded silk waistcoat	3 mths.	3.00	3.00	May 1910, K. C.
1 leather book cover	new	2.50	2.50	May 1910, N. Y.
1 Laundry bag	3 mths.	1.25	1.25	May 1910, K. C.
1 silk petticoat	3 mths.	10.00	10.00	May 1910, K. C.
1 leather purse	5 mths.	9.00	9.00	M'ch 1910, Chicago.
Silver dented floss case	.....	2.00	2.00	
Breakfast cap	6 mths.	10.00	10.00	
1 silk negligee	new	17.00	17.00	

Itemize each article.	How long in use.	Cost.	Damage.	Remarks.
1 lace & batiste negligee.....	new	17.50	17.50	Summer 1910, Europe.
1 cotton negligee 3	mths.	3.00	3.00	K. C.
1 opera bag 3	mths.	20.00	20.00	K. C.
1 handkerchief bag.....3	mths.	6.00	6.00	K. C. Spring 1910.
4 dozen handkerchiefs 3	mths.	28.50	28.50	1910—various places.
1 fitted sewing bag.....3	mths.	5.00	5.00	May, 1910.
40				
1 gold thimble.....3	mths.	5.00	5.00	K. C.
1 fitted leather bag.....	new	35.00	35.00	N. Y. Sept., 1910.
2 brushes 1 comb.....3	mths.	3.00	3.00	K. C. May, 1910.
1 lingerie waist 3	mths.	15.00	15.00	Chicago, May, 1910.
1 pr. corsets.....3	mths.	6.50	6.50	K. C. May, 1910.
1 sweater	.....	15.00	15.00	Detroit Sept. 1909.
1 three piece suit.....3	mths.	135.00	135.00	K. C. May, 1910.
One dress 3	mths.	50.00	50.00	K. C. May, 1910.
1 wrap 3	mths.	35.00	35.00	K. C. May, 1910.
One dress 3	mths.	90.00	90.00	K. C. May, 1910.
1 suit 6	mths.	90.00	90.00	K. C. May, 1910.
1 waist	new	35.00	35.00	N. Y. Sept. 1910.
1 waist	new	20.00	20.00	Paris, August, 1910.
1 waist 5	mths.	30.00	30.00	Chicago, May, 1910.
1 waist 8	mths.	7.50	7.50	K. C., 1910.
1 waist lining 8	mths.	2.98	2.98	K. C., 1910.
41				
1 umbrella	1 yr.	9.00	9.00	K. C., 1909.
1 prayer book.....	6 yrs.	3.50	3.50	

1 coin purse	2 mths.	1.50	1.50	K. C. May, 1910.
1 leather watch bracelet	new	2.00	2.00	K. C. May, 1910.
1 leather flask silver trimmed	.....	15.00	15.00	
3 men's handkerchiefs	new	3.00	3.00	Aug. Paris.
5 pr. gloves	new	7.50	7.50	Summer 1910, various places.
1 pr. gold eye glasses	.....	5.00	5.00	K. C.
1 silver hair pin box	.....	3.00	3.00	K. C.
1 glass salve box	.....	2.00	2.00	K. C.
1 traveler's brush	.....	2.75	2.75	K. C.
1 leather sewing case	.....	1.00	1.00	K. C.
1 cork screw	.....	1.00	1.00	K. C.
1 silver button hook	.....	2.00	2.00	K. C.
1 box powder	.....	1.00	1.00	K. C.
pr. nail scissors	.....	1.50	1.50	K. C.

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3 bolts ribbon	new	2.00	2.00	May, 1910, K. C.
3 yds. veiling	new	1.50	1.50	May, 1910, K. C.
1 aigrette	new	16.00	16.00	Chicago, May, 1910.
Teakwood stand	.....	2.00	2.00	1910 Europe.
2 prs. Embroidered collar- and cuffs.	new	16.00	16.00	May, 1910, N. Y.
Belt buckle and belt	6 mths.	8.00	8.00	1910 K. C.
1 veil case	5 mths.	5.00	5.00	1910 K. C.
4 yds. lace	.....	14.00	14.00	Sept. 1910, N. Y.
4 hat pins	.....	6.00	6.00	1910—various places.
1 silk scarf	new	8.00	8.00	Sept. 1910, N. Y.
2 hat ornaments	.....	7.00	7.00	K. C. & Chicago May, 1910.
2 combination suit-	3 mths.	5.00	5.00	May, 1910, K. C.
4 night gowns	3 mths.	29.00	29.00	May, 1910, K. C.
5 chemise	3 mths.	25.00	25.00	May, 1910, K. C.

Itemize each article.	How long in use.	Cost.	Damage.	Remarks.
1 jewel case	London 1908	8.00	8.00	
43				
1 diamond bar pin	.....	250.00	250.00	Set with stones belonging to my mother for many years.
1 gold watch	1907 K. C.	25.00	25.00	
1 necklace	Paris Aug. 1910	121.60	121.60	
1 enameled bar	K. C. 1910	3.50	3.50	
1 gunmetal chain	K. C. 1910	3.00	3.00	
2 enameled pins	K. C. 1910	2.00	2.00	
1 string beads	K. C. 1910	2.00	2.00	
1 lacquer box	Europe 1910	14.40	14.40	
1 cigarette case	Europe 1910	16.00	16.00	
1 Mandarin coat	London 1908	41.60	41.60	
1 prescription	.....	....	.....	The prescription was made by Dr. Kraus of Carlsbad, Austria, the diagnosis by Dr. J. MacKenzie of London. I do not know how to value these items as my trip abroad was for my health and for the purpose of consulting noted specialists about heart trouble. If I am entitled to be paid for these items I should receive a very considerable sum."
1 diagnosis & treatment to be followed	.....	....	.....	
44				
1 trunk May 1910	K. C.	45.00	45.00	
1 dozen sachets	Summer 1910 K. C. & Paris	10.00	10.00	

45 (By Mr. Marley:)

Q. This is a list that you made up at the time. That is an accurate list, is it not?

A. Yes, sir.

Q. Now, the question of values, that's what I want to bring out. How did you arrive at those values?

Mr. Hall: I will get through in just a minute.

Mr. Marley: As I understand it, the list is offered in evidence excepting the values.

Mr. Hall: Yes, we don't claim that's binding upon the defendants, the values shown in this list.

(By Mr. Hall:)

Q. Will you look at that list and tell the court whether or not the prices set opposite each article in that list is the reasonable value of each article at the time your trunk was checked in New York?

Mr. Hall: I might explain here that there are several articles contained in this list for which no claim is made in this suit. After Miss Beaham brought the case to me I advised her there were several of the articles contained in this list which would not properly constitute baggage and there are several articles in this list which we don't make any claim for in this suit.

The Court: Are the items claimed in the petition all included in that list?

Mr. Hall: Yes, sir.

The Court: Are the prices named in the petition the prices named in the list for such articles as you claim in the petition?

Mr Hall: Yes, sir.

Q. That's true, is it not?

A. Yes, sir.

46 The Court: What was the amount claimed in the petition.

Mr. Hall: The total is $1,595.58.

Q. In this list you have a trunk named with the value of forty-five dollars placed opposite that item. Was that the reasonable value of that trunk at that time?

A. It was. It was a new trunk.

Q. When had you bought that trunk?

A. Just when I left.

Q. How much did you pay for it?

A. Forty-five dollars.

Q. Were the prices which you have stated in this list the prices which you paid for the various articles at the time you bought them?

A. Not for all my things. For the things that were new when I left Kansas City. The dresses that had been made, I put down what I paid for them because I hadn't used my dresses that summer, I had been in bed most of the summer, I was in mourning and I wasn't in condition to buy new clothes and they were worth more to me rather than less because I was in such a condition I couldn't stand to be fitted.

(By Mr. Marley:)

Q. All those values you put on this list were the reasonable values of the articles at the time you made the list?

A. Yes, sir.

Mr. Marley: Let the list go in.

(By Mr. Hall:)

Q. Miss Beaham, since the death of your father you are the owner of a certain number of shares of the Faultless Starch Company yourself?

A. I am.

47 Q. And you are able to live on your own income?

A. I am.

Mr. Marley: We will concede she is a lady of high social standing and prominence in Kansas City, Missouri, and those questions will be out of the case.

Cross-examination by Mr. Marley:

Q. When you went to the ticket office of the Grand Central station in New York City you bought a ticket to Kansas City, Missouri, and paid $30.75 for it?

A. Yes, sir.

Q. You came over the New York Central from New York City to Buffalo, New York, and the Michigan Central out from Buffalo, New York, to Chicago, Illinois, didn't you?

A. Yes, sir.

Q. Then at Chicago, Illinois, you took the Atchison, Topeka & Santa Fe Railway to Kansas City, Missouri?

A. Yes, sir.

Q. After you bought that ticket and paid $30.75 you also paid four dollars for the privilege of riding on what was known as the "Wolverine Express"?

A. I paid whatever it was.

Q. After you bought those two tickets you went to the baggage agent and gave him a baggage check and received from him the baggage check which you just put in evidence?

A. I gave him my ticket.

Q. You gave him a baggage check and got this baggage check, the one just put in evidence?

A. Yes, sir.

Q. At the time you had him give you this check marked

48 Exhibit "1," did you at that time notify the baggageman that you had anything, jewelry or valuables in the trunk, in excess of a hundred dollars?

A. No one asked me.

Q. Nothing was said about it one way or the other?

A. No, sir.

Q. You said nothing about it and he said nothing about it?

A. No, sir.

Q. And, as I understand, all you did was to show him your railroad tickets and hand him the other baggage check and he gave you this check, checking your baggage from the Grand Terminal Station in New York City, in the State of New York, over the New York Central & Hudson River Railroad *Company*, Michigan Central and Santa Fe to Grand Avenue station in Kansas City, Missouri?

A. Yes, sir.

Q. And that was the entire transaction, was it not?

A. Yes, sir.

Q. Nothing said by you or the baggageman, either one, as to the value of the baggage?

A. No, sir.

Redirect examination by Mr. Hall:

Q. Did you read that baggage check when it was given to you, Miss Beaham?

A. No, sir, I glanced at it to see if he put Grand Avenue on it. He said, "You are the lady who wanted your trunk checked to Grand Avenue?", and I took the check and I saw it had Grand Avenue written on it. He handed it to me and he said, "There you are."

Q. Did you read your ticket at the time it was handed to you?

A. No, sir.

Q. What was said to you by the ticket agent when he gave you the ticket?

A. Nothing said.

49 Q. He simply handed you out the ticket?

A. Yes, sir.

Recross-examination by Mr. Marley:

Q. As I understand it, this baggage check, your Exhibit "1," was handed to you about eleven o'clock in the morning of September 10th, 1910?

A. Yes, sir, a few minutes before eleven.

Q. And you had it with you until you took the Wolverine out of New York City at the Grand Terminal Station about four-thirty p. m. of the same day?

A. Yes, sir.

(Witness excused.)

Plaintiff here rested her case.

Whereupon the defendant, to sustain the issues upon its part, offered evidence as follows:

Mr. Marley: I desire to offer in evidence deposition taken at the Grand Terminal station, room 2613, in New York City, State of New York, on the 31st day of August, 1912, the first being the deposition of Mr. Frank M. Lahm.

Said deposition, omitting caption, jurat and certificate, is in words and figures as follows, to-wit:

"FRANK M. LAHM, being produced, sworn and examined, on the part of the defendant, deposes and says, as follows:

Direct examination by Mr. Mann:

Q. Mr. Lahm, are you ticket agent of the New York Central & Hudson River Railroad Company at the Grand Central Station?

A. I am.

Q. How long have you been such ticket agent?

A. Twenty-five years.

Q. Been at the Grand Central Station all that time?

A. At the Grand Central Terminal.

Q. And you were the ticket agent at that place during the year 1910?

A. I was.

Q. Will you state whether, during the month of September, 1910, there was on file in your office New York Central Tariff No. 58, West Shore Tariff No. 36?

A. There was.

Q. I show you a copy of that tariff and ask you if the paper I hand you is a copy of that tariff that was on file in your office during September, 1910. (Mr. Mann hands Mr. Lahm the tariff).

A. Yes, that is an exact copy of the tariff.

Mr. Mann: I offer in evidence the copy of the tariff referred to. (Received and marked "Def't's Exhibit 1 of Aug. 31, 1912.")

Mr. Marley offering said exhibit: Please mark this as an exhibit. Said document was here marked by the stenographer Exhibit "3."

Mr. Marley: I desire to offer in evidence the title page of Exhibit "3" to show the issuing lines and lines over which it operates, and I desire also to show on page three of the tariff that the Atchison, Topeka & Santa Fe Railway Company is a participating carrier, on page five that the Michigan Central Railroad Company is also a participating carrier. I desire also to call attention to Section four on page eleven showing the rules and regulations with reference to baggage and excess baggage rates, also Sections five and six with reference to the same subject on page twelve.

Mr. Hall: We wish to object to the introduction of that tariff and those parts in evidence for the reason that they are not binding upon the plaintiff in this case unless they were particularly called to her attention and assented to by her at the time she purchased her ticket.

Mr. Marley: At the present time I think it is competent if those are his only objections, I don't think his objections are well taken.

The Court: Ruling reversed.

Mr. Hall: I object for the further reason it's not shown up to date that these tariffs were properly filed before the Interstate Commerce Commission or were properly filed under the Interstate Commerce act in the places where they should be filed.

The Court: Has that been shown?

Mr. Marley: I will show it. I have certified copies from the Interstate Commerce Commission. I expect to make it competent.

Mr. Hall: My position is that you have not complied with the

lerstate Commerce act in the showing that the schedules were filed
l posted in compliance with the act and that if you had shown
s, that they would not be binding upon the plaintiff unless they
re expressly called to the attention of the plaintiff and expressly
assented to by her.

Mr. Marley: When you say "filed and posted," as I understand you, and from the nature of your objections in the
ositions, you mean they were not filed and posted in the waiting
m of the Grand Terminal station in New York City in the State
New York.

Ir. Hall: That's one thing, and then I understand up to date
have not taken any testimony to show they were filed before
Interstate Commerce Commission at all.

Ir. Marley: I desire to offer in evidence New York Central tariff
and West Shore tariff number 36, a copy of the one just introed awhile ago, certified under the hand and seal of the Inter-
e Commerce Commission. Said document was here marked by
iographer Exhibit "4."

Ir. Hall: I object to the introduction of that for the reason it
t certified under the Acts of Congress.

Ir. Marley: We have a statute in this state which provides that
certified copy from the department under the seal of the de-
ment is all that is necessary. The Secretary of the Interstate
merce Commission at this time is dead and I have a letter from
chairman to that effect and instead of being certified by the
tary I have that letter.

he Court: I have not examined the method of filing these rec-
that are filed in the office of the Interstate Commerce Com-
ion. If you have filed it properly here that will be all and we
look at that in your briefs.

r. Marley: How do you say it ought to be certified by the Acts
of Congress?

Mr. Hall: My idea of what the acts of Congress require
is that if it's a court proceeding, for instance, it has got to
rtified under the hand of the judge of the court and the clerk
got to certify that the judge was the judge of the court and the
e has to certify the clerk was the clerk of the court and unless
strument is so certified it's not admissible in the state court.

ie Court: We will take the statute on it, that's all, and then
an get at it.

. Marley: To save incumbering this record won't you concede
ariff here number 58 that has been offered in evidence as Ex-
"4" was the tariff in effect and governing the carriage of
ge from New York City in the State of New York to Kansas
in the State of Missouri, over the New York Central, Michigan
al and Santa Fe?

. Hall: I don't know whether it was in effect or not, Mr.
y.

. Marley: I offer in evidence the title page of this Exhibit
and also offer in evidence on page number 3 the list of par-
ting carriers showing the Atchison Topeka and Santa Fe Rail-

way Company as one of such, and page 5 showing participatin carriers and the Michigan Central Railroad Company as one of suc and of course it is a tariff issued by the New York Central and Hu son River Railroad Company.

The Court: Objections are overruled.

Mr. Hall: Plaintiff excepts to ruling.

Said parts of Exhibit "4" introduced in evidence are in wor and figures as follows, to-wit:

54 The said title page reads as follows:

"Only one supplement of this tariff may be in effect at any tim

N. Y. C. & H. R. R. R. P. S. C. 1 N. Y. No. 41.
(Cancelling P. S. C. 1 N. Y. No. 24.)
N. Y. C. & H. R. R. P. S. C. 2 N. Y. No. 496.
(Cancelling P. S. C. 2 N. Y. No. 209.)
West Shore R. R. P. S. C. 2 N. Y. No. 212.
(Cancelling P. S. C. 2 N. Y. No. 79.)
N. Y. C. & H. R. R. R. C. R. C. No. 518.
(Cancelling C. R. C. No. 361.)
N. Y. C. & H. R. R. R. I. C. C. No. 833.
(Cancelling I. C. C. No. 655.)
West Shore R. R. I. C. C. No. 436.
(Cancelling I. C. C. No. 298.)

N. Y. C. Tariff, No. 58—First Issue.
W. S. Tariff No. 36—First Issue.

Cancelling Tariff No. 1B, Effective July 1, 1908, and Supplemen Thereto.

The New York Central and Hudson River Railroad Company.

New York Central Lines — New York Central Lines.

Fulton Chain Railway, Fulton Navigation Co., Raquette Lake Railway — P. C. S. 2 N. Y. P. 1, No. 1.
Raquette Lake Transportation Co. — I. C. C. PXI, No. 1.

and

West Shore Railroad

(The N. Y. C. & H. R. R. R. Co., Lessee.)

55 Local and Joint Tariff
of
Excess Baggage Rates
and Miscellaneous Baggage Service Charges.

Between Stations on
The New York Central & Hudson River Railroad.

(Not including Boston & Albany R. R.)

Fulton Chain Ry., Fulton Navigation Co., Raquette Lake Ry.,
Raquette Lake Transportation Co., and
West Shore Railroad

And from Stations on such Lines
To Destinations in the United States, Canada, Cuba, Mexico, and
Central America.

Effective April 15, 1910.

Approved.
GERRIT FORT,
General Passenger Agent.

Issued at Albany, N. Y., March 15, 1910.
By W. N. SKINNER,
General Baggage Agent."

Page 3 showing the participating carriers and initial line reads as follows:

"Participating Carriers—Interstate Commerce Commission.

Participating carriers.	Initial lines.
XXXXXX	N. Y. C. & H. R. R. R.
XXXXX	I. C. C. PX 3 No.
Atchison, Topeka & Santa Fe Ry. Co.	XXXXXX
Atchison, Topeka & Santa Fe Ry. Co.	(Coast Lines)."

56 Page 5, showing the participating carriers and initial line reads as follows:

"Participating Carriers—Interstate Commerce Commission—
Continued.

Participating carriers.	Initial lines.
XXXXXX	N. Y. C. & H. R. R. R.
	I. C. C. PX 3 No.
	XXXXXX
Michigan Central R. R. Co."	

Said Exhibit 4 was certified by the Interstate Commerce Commission in the following manner, to-wit:

"Interstate Commerce Commission, Washington.

I, C. A. Prouty, Chairman of the Interstate Commerce Commission, do hereby certify that the document hereto attached is a true copy of The New York Central and Hudson River Railroad Company Tariff No. 58, I. C. C. No. 833 (West Shore Railroad Tariff No. 36, I. C. C. No. 436), filed with the said Interstate Commerce Commission on March 15, 1910, reading as effective April 15, 1910 canceled on May 1, 1911.

And I further certify that said I. C. C. No. 833 was in force and effect, as amended, throughout month of September, 1910.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said commission this 18th day of January, A. D. 1912.

[SEAL.] C. A. PROUTY,

Chairman of the Interstate Commerce Commission."

Mr. Hall: To all of which I object for the reason that said tariff is not sufficiently certified under Acts of Congress, and for
57 the further reason that it is not shown that that tariff was properly filed before the Interstate Commerce Commission and in the various stations and places where it was required to be filed by the Interstate Commerce Act and for the further reason that it is not binding on the plaintiff in this case unless it is shown that it was expressly called to the attention of the plaintiff at the time she bought her ticket or checked her trunk and expressly consented to by her.

By the Court: Objection overruled.

Mr. Hall: To which ruling of the court plaintiff excepted.

Mr. Marley: I desire to offer the excess baggage scale on page number ten of said Exhibit "4," showing the excess baggage rate in values or the excess baggage rate per hundred pounds where the rate is between $30.60 and $30.90 the excess baggage rate is $5.15.

Said offer is in words and figures as follows, to-wit:

"Excess Baggage Scale.

(See Exceptions on Page 11.)

Sec. 2.

(*a*) The charge for Excess Baggage must be based on the standard one-way first-class limited (not temporarily reduced) fare via route of ticket.

(*b*) The minimum collection for any shipment will be 25 cents.

Where the standard one-way first-class limited fare is—		The excess baggage rate per 100 lbs. will be—
From—	To—	
30.61	30.90	5.15"

58 Mr. Hall: To which I would like to interpose the same objections as the one just stated.

By the Court: Objection overruled.

By Mr. Hall: To which ruling plaintiff excepts.

Mr. Marley: I desire to offer in evidence Section 4 on page 11 of this Interstate Commerce Tariff, Exhibit "4."

Said offer is in words and figures as follows, to-wit:

"Sec. 4. Free Baggage Allowance (Weight and Value).—(*a*) 150 pounds of baggage, not exceeding $100.00 in value, will be carried free in baggage cars for each adult passenger, and 75 pounds, not exceeding 50.00 in value, for each child traveling on a half ticket (unless a lower limit of value is shown in tariff announcing fares), except as follows:

(*b*) On baggage carried between two points in New York State not requiring transit through another state, the limit of value of baggage carried free will be $150.00 for each adult passenger, and $75.00 for each child traveling on a half ticket.

(*c*) These Companies will not accept any greater liability than $50.00 for baggage belonging to one passenger when checked on a commutation or family ticket.

(*d*) No baggage will be transported in connection with low rate excursion tickets where tariff announcing fares so states.

(*e*) On Around-the-World and Trans-Pacific tickets (not including Colonist, Summer Excursion, Convention or other reduced fare tickets to the Pacific Coast, in connection with the steamship
59 orders beyond) 350 pounds of baggage will be checked free for each adult passenger and 175 pounds for each child presenting valid transportation, subject to same limit of value as ordinary baggage. Baggage will be checked only by baggagemen at stations and only on presentation of railway ticket and accompanying order or ticket covering steamship transportation, but baggage will not be checked beyond the ports of San Francisco, Seattle, Tacoma or Vancouver (according to routes). Officers of the U. S. Army or Navy, en route to the Orient, who use Government Transports from the Pacific Coast, will be entitled only to 150 pounds of baggage free."

Mr Hall: To which I wish to interpose the same objection as the one last stated.

By the Court: Objection overruled.

By Mr. Hall: To which ruling plaintiff excepts.

Mr. Marley: I desire to offer that section 4, *a*, *b*, *c*, *d* and *e*.

Mr. Hall: To which I wish to interpose the same objection as the one last stated.

By the Court: Objection overruled.

By Mr. Hall: To which ruling plaintiff excepts.

Mr. Marley: I desire to offer in evidence Section 6 on page 12 of Exhibit "4."

Said offer is in words and figures as follows, to-wit:

"Sec. 6. Excess Value.—(*a*) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100.00 in value for 50 pounds excess weight, adding enough to make rate end in 0 or 5."

60 Mr. Hall: I wish to interpose the same objection as th
one last stated.

By the Court: Objection overruled.

By Mr. Hall: Plaintiff excepts to the ruling.

Mr. Marley: I desire to offer in evidence Section 9 on page 12
Exhibit "4," defining baggage.

Said offer is in words and figures as follows, to-wit:

"Sec. 9. Baggage Defined.—(*a*) Baggage consists of wearing a
parel, toilet articles and similar effects in actual use and necessa
and appropriate for the wear, use, comfort and convenience of t
passenger for the purpose of the journey, and not intended for oth
persons, nor for sale.

(*b*) Money, jewelry, negotiable papers and such valuables, shou
not be enclosed in baggage to be checked, but carried by the own
or forwarded by express. The carriers party to this tariff will n
be responsible for such articles in baggage.

(*c*) Baggage must be enclosed in receptacles provided with ha
dles and sufficiently strong to withstand necessary handling—su
as trunks, valises, telescopes, and cases and leather hat boxes.

(*d*) Receptacles when not securely locked will not be received
checked except with the understanding that no liability will be
sumed for loss of articles therefrom."

Mr. Hall: The same objection. I would like to interpose a fu
ther objection and move this be stricken out for the reason it's n
shown and cannot be shown that the portions read by t
61 counsel for the defendant are any part of the rate as fil
before the Interstate Commerce Commission.

The Court: I don't know. Has it been or not?

Mr. Marley: Certainly; here it is; it says it's filed. I am readi
from the one that is certified by the Chairman of the Commerce Co
mission under the seal of the commission.

Mr. Hall: I claim that that he has read is not any part of the ra
but is a mere incident to the rate and not in any way binding on

By the Court: Objection overruled.

Mr. Hall: Plaintiff excepts to the ruling.

Mr. Marley: In connection with the testimony of Mr. Lahm,
desire to again offer this Exhibit "3." It really is the same as E
hibit "4," and there is no use in setting it out in the record excepti
that I am offering it as a part of the deposition of Mr. Lahm fr
which I am reading, and I presume would be taken subject to t
same objections as made to Exhibit "4."

Mr. Hall: Let the record show the same objections are made
Exhibit "3" as were made heretofore to Exhibit "4."

Said Exhibit 3 was then introduced in evidence and is identi
with Exhibit 4 hereinbefore set out.

"Q. Will you state, Mr. Lahm, whether during September, 19
notices were posted in the station to the effect that passenger tar
were on file in your office as required by the Interstate Comme
Commission?

A. Two copies of those notices were posted in the station, copies of which you have there.

62 Q. I show you two notices and ask you if they are exact copies of the notices which were on file in the station during September, 1910? (Mr. Mann hands Mr. Lahm the notices.)

A. Those are exact copies of the notices posted in the station.

Mr. Mann: I offer in evidence the two notices referred to.

(Received and marked "Defendant's Exhibits 2 and 3" of August 31, 1912.")

Mr. Marley: We offer in evidence the said two notices.

Said documents were here marked by the stenographer Exhibits "5" and "6," and introduced in evidence and are in words and figures as follows, to-wit:

"New York Central & Hudson River R. R.

New York Central Lines.	*Notice.*	New York Central Lines.
'America's greatest Railway system.'		'America's greatest Railway system.'

The passenger fare schedules applying from this station and index of this Company's passenger tariffs are on file in this office, and may be inspected by any person upon application without the assignment of any reason for such desire.

The agent or other employe on duty in the office will lend any assistance desired in securing information from or in interpreting such schedules.

63 Complete public files of the passenger fare schedules issued by this Company, and to which this Company is a party, are located at Room 415, 143 Liberty Street, New York City, N. Y.

Room 3, 377 Main Street, Buffalo, N. Y.

October 1, 1908. From 1622. C. H. S. 3-21-11-200."

"New York Central & Hudson River R. R.

New York Central Lines.	*Notice.*	New York Central Lines.
'America's greatest Railway system.'		'America's greatest Railway system.'

The passenger fare schedules applying from this station and index of this Company's passenger tariffs are on file in this office, and may be inspected by any person upon application without the assignment of any reason for such desire.

The agent or other employe on duty in the office will lend a
assistance desired in securing information from or in interpreti
such schedules.

Complete public files of the passenger fare schedules issued
this company, and to which this company is a party, are located
Room 415, 143 Liberty Street, New York City, N. Y.

Room 3, 377 Main Street, Buffalo, N. Y.

October 1, 1908. Form 1622. C. H. S. 3-21-11-200."

Mr. Hall: I object to the introduction of those notices in eviden
because the posting of those notices does not comply with the
quirements of the Interstate Commerce Act.

The Court: In what respect does it fail to comply?

Mr. Hall: The Interstate Commerce Act requires the sche
64 ules themselves be posted in every station of the defenda
company. I wish to further object to it for the reason
appears upon the face of the notices that complete public files of t
passenger fare schedules are not on file in the station.

Mr. Marley: Oh, no. They are on file in the station and the
other additional places.

The Court: The first clause in the notices says they are on file
the office. Suppose the complete rate from New York to Kansas Ci
is posted. Isn't that all that you would be interested in?

Mr. Hall: I think it would in this case, but I don't think th
would comply with the interstate commerce act. My first contenti
was the publishing of this notice was not the same as posting t
schedule itself. Since reading this notice it appears the comple
files of the passenger fares are not on file at the Grand Central stati
in New York, which shows the law has not been complied with.

By the Court: Objection overruled.

Mr. Hall: Plaintiff excepts to the ruling.

Mr. Marley: I desire to offer in evidence a certified copy of
order of the Interstate Commerce Commission, which they have
right to make under and by virtue of the amendments to the Int
state Commerce Act.

Said document was here marked by the stenographer Exhibit "7
introduced in evidence, and is in words and figures as follows, to-w

65 "Interstate Commerce Commission.

At a General Session of the Interstate Commerce Commission, He
at its Office in Washington, D. C., on the 2nd Day of Ju
A. D. 1908.

Present:

Martin A. Knapp, Judson C. Clements, Charles S. Prouty, Fran
M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harl
Commissioners.

In the Matter of Modification of the Provisions of Section Six of the Act with Regard to Posting Tariffs at Stations.

Under the authority conferred upon the Commission by Section 6 of the act, to modify its requirements as to publishing, posting, and filing of tariffs, the Commission issues the following order, in connection with which it must be understood that each carrier has the option of availing itself of this modification of the requirements of Section 6 of the act or of complying literally with the terms of the act. If such modification is accepted by a carrier it must be understood that misuse of the privileges therein extended or frequent misquotations of rates on the part of its agents will result in cancellation of the privileges as to that carrier. It should also be understood that in so modifying the requirements of the act the commission expects a continuation by carriers of the practice of furnishing tariffs to a reasonable extent to frequent shippers thereunder;

66 Every carrier subject to the provisions of the act to regulate commerce (excepting those to which special and specific modifications have heretofore been granted) shall place in the hands and custody of its agent or other representative at every station, warehouse, or office at which passengers or freight are received for transportation, and at which a station agent or a freight agent or a ticket agent is employed all of the rate and fare schedules which contain rates and fares applying from that station, or terminal or other charges applicable at that station, including the schedules issued by that carrier or by its authorized agent and those in which it has concurred. Such agent or representative shall also be provided with all changes in, cancellations of, additions to, and reissues of such publications in ample time to thus give to the public, in every case, the thirty days' notice required by the act.

Such agent or representative shall be provided with facilities for keeping such file of schedules in ready-reference order, and be required to keep said files in complete and readily accessible form. He shall also be instructed and required to give any information contained in such schedules, to lend assistance to seekers for information therefrom, and to accord inquirers opportunity to examine any of said schedules, without requiring or requesting the inquirer to assign any reason for such desire, and with all the promptness possible and consistent with proper performance of the other duties devolving upon him. He shall also furnish upon request therefor quotation

67 in writing of rates via such carrier's line not contained in the tariffs on file at that station. Carrier may arrange for such agent to refer such requests to a proper officer of the company, but the quotation must be furnished within a reasonable time and without unnecessary delay.

Each of such carriers shall also provide and each of such agents or representatives shall also keep on file copies of the current I. C. C. issues of the indices of the tariffs of that carrier.

Each of such carriers shall also provide, either in its indices of tariffs (provided for in Rules 11 and 39 of Commission's tariff regulations, Tariff Circular 15 A) or in separate publication or publications, which must be kept up to date, be given I. C. C. numbers and

be filed with the Commission, an index or indices of the tariffs that are to be found in the files at each of its several stations or offices. Such index shall be kept on file and be open to inspection at each of such several stations or offices as hereinbefore provided. If such indices are prepared for a system of road or for a number of stations or offices they must be printed and may be arranged under a system of station numbers and alphabetical list of stations. If arranged for individual stations or offices they may be printed or typewritten. All such indices must be of size 8 by 11 inches.

Each of such carriers shall require its traveling auditors to check up each station's or office's file of tariffs at least once in each six months, unless it employs one or more traveling tariff inspectors who will make such inspections and checks.

68 Each of such carriers whose lines reach any of the cities in the following list, either over its own rails or by trackage rights or by boat line, or by ferry, shall provide and maintain at each of said cities so reached by it, and at such additional points as may from time to time be designated by the Commission, complete files of the tariff publications which it issues or is a party to, together with indices of same as hereinbefore required:

Alabama, Montgomery.
Arkansas, Little Rock.
California, San Francisco.
Los Angeles.
Colorado, Denver.
Connecticut, Hartford.

Florida, Jacksonville.
Georgia, Atlanta.
Illinois, Chicago.
Springfield.
Indiana, Indianapolis.
Iowa, Des Moines.
Louisiana, New Orleans.

Maine, Portland.

Maryland, Baltimore.
Massachusetts, Boston.
Worcester.
Michigan, Detroit.
Minnesota, St. Paul.
Minneapolis.
Mississippi, Jackson.
Missouri, St. Louis.
Kansas City.

Montana, Helena.
Nebraska, Omaha.
New York, New York.
Buffalo.
North Carolina, Charlotte.
Ohio, Cincinnati.
Cleveland.
Oklahoma, Oklahoma City.
Oregon, Portland.
Pennsylvania, Philadelphia.
Pittsburg.
South Carolina, Columbia.
South Dakota, Sioux Falls.
Tennessee, Memphis.
Chattanooga.
Texas, Fort Worth,
Houston.
Utah, Salt Lake City.
Virginia, Richmond.
Washington, Seattle.
Wisconsin, Milwaukee.

69 Each of such files shall be in charge of an employe who will give information and assistance to those who may wish to consult such file, and each such file shall be kept open and access-

ble to the public during ordinary business hours and on business days.

Each of such carriers whose lines do not so reach any of the above named cities shall also provide at least — one point on its lines a complete file of the tariffs which it issues or is a party to, together with indices of same as hereinbefore required, which file will be in charge of an employee of the carrier, who will give desired information and assistance to those who may wish to consult such file. This file of tariffs shall be open and accessible to the public during ordinary business hours and on business days.

Each of such carriers shall also provide and cause to be posted and kept posted in two conspicuous places in every station waiting room, warehouse, or office at which schedules are so placed in custody of agent or other representative notices printed in large type and reading as follows:

(A) Complete public file (or files) of this company's tariffs is (are) located at — in the city of — (or the cities of — and —). The rate and fare schedules applying from or at this station and indices of this company's tariffs are on file in this office, and may be inspected by any person upon application and without the assignment of any reason for such desire.

The agent or other employee on duty in the office will lend any assistance desired in securing information from or in interpreting such schedules.

70 At exclusive freight stations or warehouses and at exclusive passenger stations or offices carriers may, under this order, place and keep on file only the freight or passenger schedules, respectively and in such case the posted notices may be varied to read.

The freight rate (or passenger fare) schedules applying from or at (or from) this station and index of this company's freight (or passenger) tariffs are on file in this office, etc.

Each of such carriers shall also require its agent or other employee in charge of tariffs at each point where complete public file is not kept to post from time to time in a public place in waiting room or office a brief bulletin notice to the effect that rates from that station on certain commodities have been changed.

Compliance with those orders as to all available tariffs is required not later than October 1, 1908, and full compliance in every instance not later than January 1, 1909.

A true copy.

EDWIN A. MOSELEY, *Secretary.*

A true copy.
[SEAL.]

JOHN H. MARBLE, *Secretary.*"

Mr. Hall: I wish to object to the introduction of this, for the reason it's not properly certified and for the further reason that the ruling of the Interstate Commerce Commission would not be binding upon this court in interpreting the Interstate Commerce Act as applying to this plaintiff and that no matter what they ruled wouldn't prejudice the rights of the plaintiff.

Mr. Marley: You concede that is sufficiently large type, don't you?

Mr. Hall: I don't want to concede anything. I am not making any point on the type, however.

Mr. Marley: Let it be agreed then that these two exhibits "5" and "6" of the defendant shall go up to the appellate courts if need be as original exhibits.

Mr. Hall: All right.

By the Court: Objection overruled.

Mr. Hall: Plaintiff excepts to the ruling.

"Q. Were the notices which were posted in the station in September the same size and did they contain the same wording as these two notices which are attached?

A. The same.

Q. Will you state whether any amendment was made to the tariff, defendant's Exhibit 1, between April 15, 1910, and September, 1910?

Mr. Bowersock: The plaintiff objects to that question for the reason that the witness has not shown himself qualified to answer whether any amendments were made or not."

Objection overruled; to which ruling of the court plaintiff at the time duly excepted.

Q. Do you know whether any amendment was made to this tariff, defendant's Exhibit 1, between April, 1910, the date it became effective and September, 1910?

A. I do not.

Q. Was any amendment made to this tariff between April,
72 1910, and September, 1910?

A. Not between April and September.

Q. No amendment was made during that time?

A. No amendment was made to my knowledge and belief between April and September.

Q. Was any amendment made to the tariff during September, 1910?

A. In effect September 1st.

Q. You mean that an amendment was made to take effect September 1st?

A. Yes, September 1st.

Q. I show you paper marked "Supplement No. 1 to tariff No. 58," and ask you if that contains the amendment made to the tariff to take effect September 1st, 1910 (Mr. Mann hands Mr. Lahm the supplement)?

A. This is a copy of that amendment.

Mr. Mann: I offer in evidence supplement No. 1 to the tariff in question, effective Sept. 1, 1910.

(Received in evidence and marked "Defendant's Exhibit 4.")

Mr. Marley: I offer in evidence Supplement No. 1, effective September 1st, 1910.

Said document was here marked by the stenographer Exhibit "8."

Mr. Marley: I will say to Your Honor that this Exhibit "8" just offered does not in any manner affect the sections regulating excess baggage rates in any manner, but has reference to sections entirely foreign, but I show it merely to show the tariff has not been changed in any way.

Mr. Hall: Plaintiff admits exhibit 8 does not change or alter exhibits 3 and 4. I would like to interpose the same objections to the introduction of this that I stated to the introduction of Exhibits "3" and "4."

73 By Mr. Marley: In view of the admission of plaintiff I will not introduce Exhibit 8 in any manner so far as excess baggage rates are concerned here.

(By Mr. Mann:)

Q. Were any other changes or amendments made to this tariff, defendant's exhibit 1, any time between April 15th and November 1, 1910?

A. Not to my knowledge or received by me.

Q. Was any change or amendment made between April 15, 1910, and November 1, 1910, to Sections 4, 5, 6, 7 and 9 of the tariff, defendant's exhibit 1?

A. Not that I was advised of.

Q. So far as you know then, those provisions of the tariff were in effect during the entire month of September, 1910.

A. So far as I know.

Q. Mr. Lahm, can you tell me in what tariff the passenger rates between New York and Kansas City during September, 1910 were contained; i. e., can you tell me what tariff on file in your office contained the passenger rates from New York to Kansas City during September, 1910?

A. The joint Tariff.

Q. What was the number of that tariff?

A. That I cannot tell you without looking.

Q. Can you tell me whether it was Joint Passenger Tariff No. 53?

(Mr. Mann hands Mr. Lahm the tariff.)

A. This is the tariff in effect during September, 1910.

Q. And what tariff is that?

A. It is Joint Passenger Tariff No. 53.

Q. Is the Interstate Commerce Commission No. shown there?

A. I. C. C. No. A-15. That was effective December 1, 1909.

74 Q. And how long did it remain in effect?

Mr. Bowersock: I will object to that question for the reason that it calls for a legal conclusion of the witness.

Q. Do you know whether Passenger Tariff No. 53 was in effect during the entire month of September, 1910?

A. It was in effect during September, 1910.

Q. Will you state whether the rates shown on page 66 of that tariff were in any way changed or amended prior to November 1, 1910.

Mr. Bowersock: I make the some objection to that.

A. Please put that question again.

Q. Will you state whether the passenger rates shown on page 66 of Tariff No. 53 were changed or amended in any way during the month of September, 1910.

Mr. Bowersock: The same objection.

A. They were not.

Q. What supplements, if any, to this tariff, No. 53, were in effect during September, 1910?

Mr. Bowersock: I object to that as calling for a legal conclusion of the witness.

A. Supplements No. 6 and No. 7.

Q. Will you state whether this passenger tariff, No. 53 and supplements Nos. 6 and 7 were on file in your office at the Grand Central Terminal during the month of September, 1910.

A. They were.

Mr. Mann: I offer in evidence tariff No. 53 and supplements Nos. 6 and 7.

(Received in evidence and marked "Defendant's Exhibits 5, 6 and 7.")

75 Mr. Bowersock: Plaintiff objects to the introduction of defendant's Exhibits 5, 6 and 7 for the reason that they are not properly identified."

Mr. Marley: I offer in evidence Tariff 53.

Said document was here marked by the stenographer Exhibit "9."

Mr. Marley: I desire to offer the title page of Exhibit "9," also on page two showing the participating carriers to be Atchison, Topeka & Santa Fe Railway Company and on page 5 showing Michigan Central Railroad as a participating carrier and it's issued by the New York Central & Hudson River Railroad and is naturally effective over it, and on page 66 showing the rate to Kansas City with a three days' limit first class to be $30.75 and the excess baggage rate $5.15, and also sections 3 and 4 of the rules and regulations contained on page 10 of the same schedule, which is to the same effect as the other.

Said parts are introduced in evidence and are in words and figures as follows, to-wit:

The title page reads as follows:

"To ticket agents: To be filed in each Passenger office as required by law.

Only one supplement to this tariff may be in effect at any time, except as provided for in Rule 36, page 14, of this tariff.

P. S. C.—N. Y.—No. 5. (Cancels P. S. C.—2 N. Y.—No. 4 and supplements thereto.)

I. C. C. No. A-15 (Cancels I. C. C. No. A-7 and supplements thereto.)

76 *Joint Passenger Tariff No. 53.*

(Cancels Tariff No. 52 and Supplements thereto.)
Fares
From
New York, N. Y.,
And
Jersey City, Hoboken and Weehawken, N. Y.
To
Destinations in the United States, Canada, Mexico, Cuba
and
Central America.
Issued October 30, 1909.
Effective December 1, 1909.

This Tariff is published by C. L. Hunter, Agent, for and on behalf of each of the following initial lines under Powers of Attorney as shown and as filed with the Interstate Commerce Commission and the Public Service Commission, 2d District, State of New York.

The Baltimore & Ohio Railroad Co., (I. C. C. *C.* Px. 1—No. 28) C. W. Bassett, General Passenger Agent, Baltimore, Md.
Central Railroad Company of New Jersey, (I. C. C. Px. 1—No. 4). W. C. Hope, General Passenger Agent, New York, N. Y.
The Chesapeake & Ohio Railway Co., (I. C. C. Px. 1—No. 17) H. W. Fuller, Passenger Traffic Manager, Washington, D. C., Jno. D. Potts, General Passenger Agent, Richmond, Va.
The Delaware, Lackawanna & Western Railroad Co., (I. C. C. Px. 1—No. 4) George A. Cullen, General Passenger Agent, New York, N. Y.
77 Erie Railroad Co., (I. C. C. Px. 1—No. 16) R. H. Wallace, General Passenger Agent, New York, N. Y.
Lehigh Valley Railroad Co., (I. C. C. Px. 1—No. 7) Chas. S. Lee, General Passenger Agent, New York, N. Y.
The New York Central & Hudson River Railroad Co., (I. C. C. Px. 1—No. 9 and P. S. C. 2 N. Y.—Pl. No. 1). J. F. Fairlamb, General Passenger Agent, New York, N. Y.
New York, Ontario & Western Railway Co., (I. C. C. Px. 1—No. 3) J. R. Dunbar, General Passenger Agent, New York, N. Y.
The Pennsylvania Railroad Co., (I. C. C. Px. 1—No. 6) J. R. Wood, Passenger Traffic Manager, Geo. W. Boyd, General Passenger Agent, Philadelphia, Pa.
Philadelphia & Reading Railway Co., (I. C. C. Px. 1—No. 4) Edson J. Weeks, General Passenger Agent, Philadelphia, Pa.
West Shore Railroad Co., The N. Y. C. & H. R. R. R. Co., Lessee, (I. C. C. Px. 1—No. 4). J. F. Fairlamb, General Passenger Agent, New York, N. Y.

The fares named herein for rail-and-water transportation are subject to restoration on the opening of naviga- and to suspension at

the close of navigation of the several water carriers named on pag 14 of this tariff, on notice as provided in connection therewith.

Filed by the Agent with the Interstate Commerce Commission an the Public Service Commission, 2d District, State of New York, fo all of the above named initial lines.

C. L. HUNTER, *Agent.*

143 Liberty Street, New York."

78 Page 2 reads as follows:

"Participating Carriers. (Interstate.) — Initial Line.

Atchison, Topeka & Santa Fe Railway. — N. Y. C. & H. R. R. R.
Atchison, Topeka & Santa Fe Railway—
—Coast Lines.

Page 5 reads as follows:

"Participating Carriers. (Interstate.) — Initial Line. N. Y. C. & H. R. R. R.

Michigan Central R. R."

"Destination.	Route Via.	Time limit. (days).	Fares, first class.	Excess baggage per 100 lbs.
Kansas City.	N. Y. C. or Penna., Chicago, St. Louis, Logansport, or Bloomington and direct lines or via Chicago and St. Louis	3	30.75	5.15

Said Sections 3 and 4 on Page 10 read as folows:

"Rules and Regulations.

3. Baggage—150 pounds of baggage will be checked free on each whole ticket and 75 pounds on each half ticket. No single piece o baggage weighing more than 250 pounds will be checked.

Baggage must be checked through to destination of ticket, excep that baggage may be checked to stopover points en route as author ized in Rule 31.

4. Excess Baggage—On baggage weighing over 150 pounds on each whole ticket and 75 pounds on each half ticket, charge will b made for the excess weight at the excess baggage rate per 100 pound shown herein. In computing excess baggage charges suffi-

79 cient will be added when necessary to make the same end in 0 or 5. The minimum excess baggage rate will be 15 cents pe hundred pounds and the minimum collection for any shipment wil be 25 cents.

Excess baggage rate on round-trip tickets. The excess baggag rate per 100 pounds shown in this tariff in connection with the one way fares will be charged on the going trip according to route o

ticket, and on the return trip from points on lines participating in this tariff as shown in the excess baggage tariffs of such lines as lawfully on file with the Interstate Commerce Commission and the Public Service Commission, 2d District, State of New York, and posted at such points."

Mr. Hall: To all of which we object for the same reasons pointed out to Exhibits "3" and "4".

By the Court: Objection overruled.

Mr. Hall. Plaintiff excepts to ruling.

Mr. Marley: I desire to offer in evidence the Supplement No. 6, being Exhibit 6 attached to the deposition.

Said document was here marked by the stenographer Exhibit "10."

Mr. Hall: We interpose the same objections as to Exhibits "3" and "4".

Mr. Marley: I offer that to show there has been no change governing the ticket and checking of baggage as set forth in passenger tariff 53. I think Counsel might concede there is nothing in supplement No. 6 that in any manner affects or modifies tariff No. 53, that is Exhibit "9" in evidence.

80 Mr. Hall: All right.

Mr. Marley: Then I wlll not offer Exhibit 10 or supplement No. 7 because No. 7 was effective subsequent to this transaction.

"Q. Mr. Lahm, will you state whether during the entire month of September, 1910, you had on file at your office in the Grand Central Station copies of Joint Passenger Tariff No. 53, effective December 1, 1909, and supplements 6 and 7 to said tariff, and whether the papers marked "Defendant's Exhibits 5, 6 and 7" are exact copies of the tariff and supplements which were on file in your office during that time?

A. I had and they are exact copies.

Q. And these are the exact copies on file in your office?

A. Yes.

Mr. Mann: I again offer the tariff and supplements in evidence.

Mr. Bowersock: Same objection.

Mr. Mann to Mr. Lahm: That is all.

Cross-examination by Mr. Bowersock:

Q. You testified, Mr. Lahm, that tariff No. 58, West Shore No. 36 was on file in your office. What do you mean by "on file?"

A. Well, on file for the information of the ticket sellers in the office and also for the information of the public if they desire to inspect them. They were filed in the ordinary sense of the word.

Q. That was not posted up?

A. No, not posted up. We kept them in book form similar to this for easy access to any one in the office or any one outside.

Q. You mean that the tariff was in your office, available,

81 but it was not posted up?

A. Not posted up, but available at any time either inside or outside.

Q. Now you stated, so far as I remember it, that no amendment was made to that tariff between April and September, to your knowledge. Have you any knowledge as to the making of amendments except insofar as those amendments or changes were on file in your office?

A. None, except when received by me.

Q. And when you say that no amendments were made to your knowledge, none were received by you?

A. None received by me.

Q. And you have no knowledge about that further than that?

A. No knowledge beyond that.

Q. Is that what you mean when you testified that certain sections of that tariff were in effect in September, 1910, simply that they were on file in your office?

A. On file in the office.

Q. And that there had been, so far as you know, no amendments to them, nothing affecting those sections; further than that the tariff was filed in your office you don't know really whether it was in effect or not?

A. Well, I do not know just exactly how to answer that question. Of course, I suppose that everything of that kind is received by myself; that is, an agent is supposed to receive everything of that kind. That is, if an amendment is made I should receive it in the natural course of business.

Q. Unless you receive them you would assume that there were none, but that would be simply an assumption and, of course,
82 you don't know whether the legal preliminaries to make that tariff effective had been gone through or not, you simply know that it was filed in your office?

A. That it was filed in my office.

Q. And that is what you meant when you testified that any of these sections were in effect?

A. Yes.

Q. From whom do you receive these tariffs?

A. From the General Passenger Agent.

Q. His office is here in New York City?

A. In the Grand Central Terminal.

Q. These tariffs, so far as you know, were not posted anywhere, were they? I mean whether they were put up where the public could see them.

A. Not without inquiring for them.

Q. That is, they would have to come to your office for them?

A. Yes.

Q. But the tariff itself was not posted as the notices were?

A. No.

Q. And do you know of your own knowledge whether these tariffs were on file at other offices or stations or depots of the company than the New York Central Terminal in New York City?

A. I could not say.

Q. And you don't know whether they were posted in other stations or not?

A. That I could not say.

Q. So far as you know, Mr. Lahm, do these tariffs which have been introduced in evidence today include all of the tariffs that were effective in September, 1910, covering a passage from New York City to Kansas City?

A. They do.

Redirect examination by Mr. Mann:

83 Q. Mr. Lahm, do you mean by that that there were no other tariffs showing passenger rates between New York City and Kansas City in effect during September, 1910?

A. Everything is covered by that joint tariff and the supplements thereto.

Q. What I mean is this, were there any other tariffs showing local rates between New York City and Kansas City in effect during that time?

Mr. Bowersock: I will object to that question as leading and suggestive.

By the Court: Objection overruled.

Mr. Hall: Plaintiff excepts to the ruling.

A. That is the only tariff covering first class rates.

Q. Do you know whether there were local rates in effect between New York City and Kansas City during September, 1910?

A. Not published rates for my use.

Q. Do you know whether there were such published local rates contained in other tariffs?

A. I do not know how to answer that question. I know that there were local tariffs covering the through lines from here to Kansas City, but I don't know that I would have anything to do with that. I would not make up a rate from here to Kansas City based on the sum of locals without authority to do so.

Q. Well, do you know then what the local rates were in effect between New York and Kansas City during September, 1910?

A. No, I do not.

Q. What was the first class passenger fare between New York and Kansas City during September, 1910?

Mr. Bowersock: I object to the question as not the best evidence of the rates in effect.

84 By the Court: Objection overruled.

Mr. Hall: Plaintiff excepts to ruling.

A. $30.75.

Q. And that included the transportation of baggage of what value?

Mr. Bowersock: I object to that as calling for a conclusion of the witness and not being the best evidence, and as calling for parol testimony as to the contents of a printed document or varying a printed document.

By Court: Objection overruled.

Mr. Hall: Plaintiff excepts to ruling.

A. 150 lbs. of baggage, limitation of $100.00 in value.
Q. And that is shown in what tariff?
A. Tariff No. 58.
Q. What was the first class rate from New York City to Kansas City during September, 1910, when the passenger declared the value of the baggage to be in excess of $100.00?

Mr. Bowersock: We object to that for the same reason as given in the last objection.
By Court: Objection overruled.
Mr. Hall: Plaintiff excepts to ruling.

A. I have never known of a case where a passenger has made a declaration to me of his excess baggage, so I do not know how to answer that.
Q. According to this tariff, if a passenger has no baggage what would be the rate for the passenger alone from New York City to Kansas City?
A. The current tariff rate, $30.75.
85 Q. If the passenger makes no declaration of value as to the baggage what would be the charge for the passenger and the baggage?

Mr. Bowersock: I object.

A. The same as shown in the tariff.
Q. What would be the charge for the transportation of the passenger and the baggage where the passenger declares the baggage to be in excess of $100 in value?
A. The same rate for the passenger and the charge for the excess baggage should be made at the same rate for each $100 in value as for 50 lbs. excess weight. Now if the excess charge for 50 lbs. of baggage was $3.00 we will say, then the excess value of the declaration would be the same amount.

Mr. Bowersock: I move to strike out the answers of the witness for the reason that they are not responsive to the questions and for the further reason that they are concerning a printed document, and parol testimony is not proper to give the contents or modify such document.
By the Court: Objection overruled.
Mr. Hall: Plaintiff excepts to ruling.
Mr. Mann to Mr. Lahm: That is all.

Recross-examination by Mr. Bowerstock:

Q. Mr. Lahm, the amount of baggage does not affect the tariff rate on the passenger at all, does it?

Mr. Marley: I object to that as incompetent. I think, as a matter of fact, the schedules will fix that absolutely.

86 A. No.

Mr. Bowersock: That is all.

F. M. LAHM."

Mr. Marley: I offer the deposition of Harry E. Coale.

Said deposition, omitting caption jurat and certificate, is in words and figures as follows, to-wit:

"HARRY E. COALE, being produced, sworn and examined on the part of the defendant, deposes and says, as follows:

Direct examination by Mr. Mann:

Q. Where do you live, Mr. Coale?
A. My home address, Tarrytown.
Q. And where are you employed?
A. With the New York Central & Hudson River Railroad Company.
Q. In what capacity?
A. Chief Rate Clerk Passenger department.
Q. What are your duties as Chief Rate Clerk in the passenger department?
A. Primarily to supervise the compilation of passenger fare schedules.
Q. Do you also have charge of the baggage tariffs?
A. Yes, sir.
Q. Do you have charge of preparing all passenger and baggage tariffs for the New York Central?
A. Yes, sir; issued by the New York Central & Hudson River Railroad Company.
Q. And they are all prepared and issued under your supervision, are they?
A. Yes, sir.

87 Q. Mr. Cole, will you state whether New York Central Tariff No. 58, West Shore No. 36, which has been offered in evidence here as defendant's Exhibit 1, was prepared under your supervision?
A. It was.
Q. Will you also state whether supplement No. 1 to that tariff was prepared under your supervision?
A. It was.
Q. Will you state when that tariff became effective?

Mr. Bowersock: We object to that as calling for a legal conclusion.

A. April 15th.
Q. Will you please state what supplements, if any, were issued to the said tariff which in any way changed or amended that tariff in effect during the month of September, 1910?
A. Supplement No. 1 in effect September 1, 1910, made some modifications in the charges as shown in the tariff proper.
Q. Will you state whether any supplement was issued or any change or amendment made which in any way affected Sections 4, 5, 6, 7 and 9 of Tariff No. 58?
A. For what period?
Q. During the month of September, 1910.
A. No change.

Q. Will you please state whether any supplement was issued or any change was made in the rates shown on page 66 Passenger Tariff No. 53, defendant's Exhibit 5?

Mr. Bowersock: We object to that as calling for a conclusion of the witness.

By Court: Objection overruled.

Mr. Hall: Plaintiff excepts to ruling.

88 A. No change was made in the rates between New York and Kansas City.

Q. Mr. Cole, you have charge of the issuing of these tariffs and all supplements to the tariffs?

A. Yes, sir; the tariffs that are issued by the New York Central. I might make a distinction there. This tariff is not issued by the New York Central. It is a joint tariff issued by all the roads entering New York City. Mr. Hunter is the compiler, so this tariff is not issued by the New York Central, but we are a party to it.

Q. Do you know what supplements have been issued to that tariff?

A. Yes, sir.

Q. What supplements are they?

A. Supplements Nos. 1 to 14, inclusive.

Q. Do you know what supplements were issued prior to November 1, 1910?

A. Yes, sir.

Q. What supplements were they?

A. From Nos. 1 to 7, inclusive.

Mr. Mann: I offer copies of these supplements in evidence, Supplements Nos. 1, 2, 3, 4 and 5. Supplements 6 and 7 are the two supplements which have been already offered in evidence and have been marked "defendant's Exhibits 6 and 7," respectively. I now offer supplements 1, 2, 3, 4 and 5 (Received in evidence and marked defendant's Exhibits 8, 9, 10, 11, 12, respectively).

Mr. Bowersock: I object to that for the reason that they are not properly identified.

Q. Mr. Cole, do supplements 6 and 7 contain all the changes made prior to November 1, 1910?

89 A. Supplement No. 7 contains all the changes effective prior to November 1st.

Q. Then supplement No. 7 supersedes all the prior supplements.

A. Yes. 7 canceled 6; 6 canceled 5, so on.

Q. Will you state whether there were any other passenger rates in effect between New York and Kansas City during September, 1910?

A. Via the New — Central there was only one fare.

Q. And what was that?

A. $30.75, first class.

Q. What were the local rates from New York to Kansas City?

Mr. Bowersock: We object to that as calling for a conclusion of the witness and as not the best evidence as to the fares.

By Court: Objection overruled.
Mr. Hall: Plaintiff excepts to ruling.

A. From New York to Kansas City, $32.00; that is, New York to Buffalo, $9.25, Buffalo to Chicago $12.00; Chicago to Kansas City, $10.75, total of $32.00.

Q. Mr. Cole, will you please refer to the tariffs Nos. 58, defendant's Exhibit 1 and Joint Passenger Tariff 53, defendant's Exhibit 5, and compute the charge as shown by those tariffs for the transportation of a passenger and baggage from New York to Kansas City when the value of the baggage is not declared or is declared to be not exceeding $100?

Mr. Bowersock: We object to that as incompetent, irrelevant and immaterial and having no bearing on any issue in the case.

90 By Court: Objection overruled.
Mr. Hall: Plaintiff excepts to ruling.

A. What was the total weight of the baggage may I ask?

Q. I have not got that; regardless of the weight.

A. $30.75. That is providing the baggage does not weigh more than 150 lbs. If the baggage is in excess of 150 lbs. they would have to pay the excess charge based on 16 2/3 per cent of the passenger fare.

Q. Will you refer to those tariffs and compute the charge for the transportation of the passenger and baggage where the value is declared to be $1,595.98 from New York to Kansas City?

Mr. Bowersock: Same objection.

A. $69.65.

Q. What portion of that covers the transportation of the passenger and how much the transportation of the baggage?

A. The passenger is $30.75, in addition to this $38.90.

Q. And how much then is the charge shown in those tariffs for the transportation of baggage of the value of $1,595.98 from New York to Kansas City?

Mr. Bowersock: We object to that as not the best evidence.

A. $38.90.

Q. And the total then for the transportation of the passenger and baggage from New York to Kansas City where the value of the baggage is declared to be $1,595.98 is how much?

Mr. Bowersock: Same objection.

91 By Court: Objection overruled.
Mr. Hall: Plaintiff excepts to ruling.

A. Total $69.65.

Q. When the value of the baggage is not declared, or is declared as not exceeding $100 the transportation of the passenger and baggage would be how much?

A. $30.75.

Mr. Mann to Mr. Cole: That is all.

Cross-examination by Mr. Bowersock:

Q. How do you arrive at the amount $38.90?

A. By multiplying $1,495.98 by $2.60 per 100 lbs.

Q. The $2.60 is your understanding of the tariff rate on excess value of baggage?

A. Yes, sir, between New York and Kansas City.

Q. Mr. Cole, you stated that tariff No. 53 is a joint tariff; that it is not prepared in your office?

A. No, but we have a representative in attendance at all regular meetings and no fare can be changed by the New York Central unless our representative says so, so in a measure we are responsible for every fare that applies via the New York Central as shown by this tariff. The compiler would not be authorized to make any change or modification whatever in any fare shown in this publication unless he first conferred with the New York Central people or their representatives.

Mr. Bowersock: We move that that answer be stricken out as not responsive to the question.

By Court: Motion overruled.

Mr. Hall: Plaintiff excepts to ruling.

92 Q. Who actually prepares that joint tariff?

A. Mr. C. L. Hunter.

Q. Who is he?

A. He is compiler of the New York Central joint rate sheet.

Q. Through what channel does it come to you?

A. From Mr. Hunter. Of course, you understand that that only applies to No. 53 and not to 58.

Q. Through your office does it go to Mr. Lahm's office?

A. It come- from Mr. Hunter to the General Passenger Agent, from the General Passenger Agent to Mr. Lahm.

Q. Now you spoke of some local rates between New York and Kansas City. Does the New York Central issue any tariff showing those local rates?

A. The New York Central does not show any local rates beyond their own line, beyond Buffalo; when it goes beyond Buffalo it ceases to be joint.

Q. The New York Central issues no tariff whatever showing local rates beyond Buffalo?

A. No.

Q. From what source did you get the local rates from Buffalo to Chicago and from Chicago to Kansas City to which you have testified?

A. From the tariffs that are on file in our office quoting fares between those points. Those tariffs are furnished us by our connections.

Q. Those are tariffs furnished you by the railroads running between Buffalo and Chicago and between Kansas City and Chicago?

A. Yes, sir.

Q. But the only tariff rate which you issue between New York and Kansas City is $30.75?

A. Yes, sir.

93 Q. Now with regard to this excess charge for baggage, has that anything to do with the purchase of a ticket by a passenger; does that affect in any way the transaction in which the passenger would purchase a ticket from New York to Kansas City—you buy that ticket without reference to the amount of your baggage?

A. The passenger is entitled to 150 lbs. or $100 in value.

Q. Who would make the charge for baggage?

A. The baggage agent.

Q. Has the passenger agent or ticket agent anything to do with hat?

A. No, sir; it is handled through the baggage department.

Q. The purchase of the ticket would operate the same where you ad $100 in baggage or $1,500?

A. Yes, sir.

Q. And the excess charge would be made by the baggage agent?

A. Yes, sir; that is correct.

Q. And that would naturally come after the purchase of the icket?

A. Yes, that would come after the purchase of the ticket.

Q. You could not check your baggage until after you have bought our ticket?

A. No, sir.

Mr. Bowersock: I believe that is all.

Redirect examination by Mr. Mann:

Q. After the passenger purchases a ticket if he declares the value be in excess of $100, do you know what the practice is with refernce to the collection of the charge and the issuance of a baggage heck?

A. Will you please repeat that question?

Q. Where the passenger declares the baggage to be in excess of $100, do you know what the practice is with reference issuing a check and collecting for the excess value?

A. No; of course, I know what the instructions are.

Q. Now tariff No. 58 and all supplements to that tariff were issued nder your supervision, were they?

A. Yes, sir.

Q. Will you state whether any supplement was issued which in y way affected the provisions contained in sections 4, 5, 6, 7 and 9 that tariff prior to November 1, 1910?

A. No supplements have been issued to the tariff No. 58, affecting tions 4, 5, 6, 7 and 9.

Q. What supplements, if any, were issued to the tariff prior to vember 1, 1910?

A. Supplement No. 1 is the only supplement.

Q. And no other change of any of the provisions shown in it had en made prior to September 1, 1910?

A. No, sir.

Recross-examination by Mr. Bowersock:

Q. Mr. Cole, so far as you know, are the tariffs which have been introduced in evidence all the tariffs issued by the New York Central affecting the carriage of passengers and their baggage between New York City and Kansas City, during the month of September, 1910?

A. Yes, sir.

Mr. Bowersock: That is all.

Re-redirect examination by Mr. Mann:

Q. There were other New York Central Tariffs in effect
95 showing local passenger rates from New York to Buffalo during that time?

A. New York to Buffalo, yes, sir.

Q. Were there any other tariffs showing excess baggage rates in effect, either a local or a joint, other than tariff No. 58?

A. From New York to Kansas City; that was the only tariff used by the New York Central from New York to Kansas City.

Mr. Mann: That is all.

HARRY E. COALE."

Mr. Marley: I desire to offer in evidence a copy of joint passenger tariff No. 53, issued under the certificate of C. A. Prouty, Chairman of the Interstate Commerce Commission and under the seal of the Commission.

Said Tariff 53 attached to the following certificate, to-wit:

"Interstate Commerce Commission,
Washington.

I, C. A. Prouty, Chairman of the Interstate Commerce Commission, do hereby certify that the document hereto attached is a true copy of Joint Passenger Tariff No. 53, C. L. Hunter, Agent, I. C. C. No. A-15, filed on November 1, 1909, reading as effective December 1, 1909, canceled by I. C. C. No. A-33 on August 1, 1911.

And I further certify that said I. C. C. No. A-15 was in force and effect, as amended, throughout month of September, 1910.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Commission this 18th day of January, A. D. 1912.

[SEAL.] C. A. PROUTY,
Chairman of the Interstate Commerce Commission.

96 was here marked by the stenographer Exhibit 11, and admitted in evidence and said Exhibit 11 is identical with Exhibit 9 hereinbefore offered.

Mr. Hall: To which I wish to interpose the same objections as to Exhibits 3 and 4.

The Court: The objections are overruled.

Mr. Hall: Plaintiff excepts to the ruling.

Mr. Marley: I desire to offer in evidence the title page of this Tariff, also Page 2 thereof showing the issuing carrier and the participating carriers. On page 2 the Atchison, Topeka and Santa Fe Railway Company as participating carrier, and on page 5 the Michigan Central Railroad Company, participating carrier, making the through line of carriage over the New York Central & Hudson River Railroad Company, Michigan Central Railroad Company and Atchison, Topeka & Santa Fe Railway Company New York City to Kansas City, Mo., and page 66 of said exhibit 11 showing rates New York to Kansas City.

Said portions of Exhibit 11 are in words and figures as follows, to-wit: The title page in words and figures as follows:

"Ticket Agents: To be filed in each Passenger Office as required by law.

Only one Supplement to this tariff may be in effect at any time, except as provided for in Rule 36, page 14, of this tariff.

P. S. C.—2 N. Y.—No. 5 (Cancels P. S. C.—2 N. Y. No. 4 and Supplements thereto.)

I. C. C. No. A-15 (Cancels I. C. C. No. A 7 and Supplements thereto.)

97 *Joint Passenger Tariff No.* 53.

(Cancels Tariff No. 52 and Supplements thereto.)

Fares
from
New York, N. Y.
and
Jersey City, Hoboken, and Weehawken, N. J.,
to
Destinations in the United States, Canada, Mexico, Cuba, and Central America.

Issued October 30, 1909.

Effective December 1, 1909.

This Tariff is published by C. L. Hunter, Agent, for and on behalf of each of the following initial lines under Powers of Attorney as shown and as filed with the Interstate Commerce Commission and the Public Service Commission, 2d District, State of New York:

* * * * * * * * *
* * * * * * * * *

The New York Central & Hudson River Railroad Co., (I. C. C. X-1-No. 9 and P. S. C.-2 N. Y.-P1-No. 1.)

J. F. FAIRLAMB,
General Passenger Agent, New York, N. Y.

The fares named herein for rail-and-water transportation are subject to restoration on the opening of navigation and to suspension at the close of navigation of the several water carriers named on page 14 of this tariff, on notice as provided in connection therewith.

98 Filed by the Agent with the Interstate Commerce Commission, and the Public Service Commission, 2d District, State of New York, for all of the above named initial lines.

C. L. HUNTER,
Agent, 143 *Liberty Street, New York.*"

And page 2 of said Exhibit 11 in words and figures reads as follows, to-wit:

"Issuing Carriers.

This Tariff is published by C. L. Hunter, Agent, for and on behalf of each of the following initial lines under Powers of Attorney as shown and as filed with the Interstate Commerce Commission and the Public Service Commission, 2d District, State of New York.

Issuing carriers.	I. C. C. PX-1 No.	P. S. C.-2 N. Y. P1 No
* * * *	* * *	* * *
* * * *	* * *	* * *
The New York Central & Hudson River Railroad Co.....	9	1
* * * *	* * *	* * *

Participating Carriers.

The fares and arrangements shown in this Tariff apply via the routes and to the destinations shown herein via lines of the participating carriers named below, whose concurrences are filed with the Interstate Commerce Commission and are as shown, being from PX3 except where otherwise noted.

Tickets must not be sold reading over the line of any carrier named below where no concurrence number is shown therefor in the column of the initial selling line.

99

Participating carriers.	Initial selling lines.
* * * * * * * * * * * *	
(Interstate)	N. Y. C. & H. R. R. R.
Atchison, Topeka & Santa Fe Ry.....	167
Atchison, Topeka & Santa Fe Ry—Coast Lines	67
* * * * * * * * * * * *	

Page Number 5 of said Exhibit 11 reads as follows:

Participating carriers.	"Initial selling lines.
(Interstate)	N. Y. C. & H. R. R.
* * * * * *	* * * * * *
Michigan Central R. R.....	491
* * * * * *	* * * * * *"

Mr. Hall: To which I wish to interpose the same objection as to Exhibits 3 and 4.

The Court: Objections overruled.

Mr. Hall: Plaintiff excepts to the ruling.

Mr. Marley: I desire to offer in evidence on Page 10, Sections 3 and 4, which I have already read in evidence.

Mr. Hall: To which I wish to interpose the same objections as to Exhibits 3 and 4.

The Court: Objections overruled.

Mr. Hall: Plaintiff excepts to the ruling.

Said Sections 3 and 4 of Exhibit 11 are introduced in evidence and in words and figures read as follows, to-wit:

"Rules and Regulations.

* * * * * * *

100 3. Baggage—150 pounds of baggage will be checked free on each whole ticket and 75 pounds on each half ticket. No single piece of baggage weighing more than 250 pounds will be checked.

Baggage must be checked through to destination of ticket, except that baggage may be checked to stop-over points enroute as authorized in Rule 31.

4. Excess Baggage—On baggage weighing over 150 pounds on each whole ticket and 75 pounds on each half ticket charge will be made for the excess weight at the excess baggage rate per 100 pounds shown herein. In computing excess baggage charges sufficient will be added when necessary to make same end in 0 or 5. The minimum excess baggage rate will be 15 cents per hundred pounds and the minimum collection for any shipment will be 25 cents."

Page 66 of said Exhibit 11 showing Passenger and Baggage rates New York to Kansas City, reads as follows:

Missouri. Destination.	Route Via.	Time limit.	Fares, first class.	Excess baggage per 100 lbs.
Kansas City.	Via N. Y. C. or Penna., Chicago, St. Louis, Logansport. or Bloomington and direct lines or via Chicago and St. Louis	3	$30.75	5.15

Mr. Marley: I desire to offer the deposition of Charles H. Wood.

Said deposition, omitting caption, jurat and certificate is in words and figures as follows, to-wit:

"CHARLES H. WOOD, being produced, sworn and examined on the part of defendant, deposeth and saith, as follows:

101 Direct examination.

Questions by Mr. Aronson:

Q. Where do you live, Mr. Wood?
A. 362 East 164th Street, New York City.
Q. Employed by the New York Central & Hudson River Railroad Company, the defendant in this action?
A. Well, I am employed jointly by the New York Central and the New Haven at Grand Central Terminal.
Q. What is your official capacity?
A. Station baggage master.
Q. And were you so employed in September, 1910?
A. Yes, sir.
Q. The plaintiff in this action testifies that on September 9, 1910, she checked a trunk from the Grand Central Station to Kansas City, Missouri. Was that trunk checked under your supervision?
A. Yes, sir.
Q. Have you any record to show the receipt of that trunk and any check which you may have issued for it?
A. Not for the check I issued to Kansas City. I issued that in exchange for a New Haven check.
Q. The New Haven check showed the trunk to have come into the Grand Central station?
A. Yes, sir; from Rye, N. Y.
Q. Did you thereupon issue to the plaintiff a check for that baggage?
A. Yes, sir.
Q. I show you this sample and ask you whether it was in the same form as that (Mr. Aronson shows Mr. Wood check)?
A. Yes, sir; that is one of our interline checks.
Q. Which portion, if any, of that check was delivered to the passenger?
A. The duplicate portion—the bottom portion.

102 Mr. Aronson offers check to be marked for identification.
Mr. Hall: I object on the ground that it is not the best evidence.

Q. Was that duplicate check delivered to the plaintiff, Miss Beaham?
A. It was delivered to the person who gave me this New Haven check.
Q. And since that time it has never come back to the possession of the defendants?
A. No, sir; not to my knowledge.

Check is now offered in evidence and marked defendant's 'Exhibit 1.'"

Mr. Marley: We don't care to offer in evidence the duplicate check because the original was offered in evidence.

"Q. Do you know whether or not there was any other form of baggage check in use at that time?

A. This is the same interline check we are using still. We have a local check that we are using.

Q. Was any other form of check in use for transportation from New York to Kansas City?

A. No, sir.

Q. Do you know whether or not the check that was delivered to Miss Beaham had the same provisions on its back as this check?

A. I believe so.

Q. Do you know of your own knowledge or not?

A. I couldn't say unless I saw the check, Mr. Aronson.

Cross-examination by Mr. Hall:

Q. Mr. Wood, at first you thought this trunk was lost on what you call a cross?

A. Yes, sir.

103 Q. Will you please explain what is meant by the term "cross"?

A. That would be 307398 on this check and they transpose the numbers occasionally, 389 or 98; that is what we call a cross.

Q. That would mean that it was sent to the wrong destination?

A. Yes, sir; to some other place; to a steamer or dock or residence, and after a reasonable length of time we should hear from them.

Q. Have you ever heard from anyone about this trunk?

A. No, sir.

Q. Did you know what became of it?

A. No, sir; I know that I signed to the New Haven for that trunk.

Q. You didn't personally attend to the checking of Miss Beaham's trunk, did you?

A. No, sir.

Redirect examination by Mr. Aronson:

Q. You don't know whether or not this trunk went to any steamship company?

A. If I had known I would have got after it. We tried everything we could think of to get the trunk. I spent two whole days trying every steamship pier.

Recross-examination by Mr. Hall:

Q. Did I understand you to say, Mr. Wood, that you had endeavored to trace this trunk at the steamship docks and various hotels and other places in the City of New York?

A. Yes, sir.

Q. And what other efforts did you make?

Mr. Aronson: I object on the ground that it is immaterial.

A. I made every effort that could be made to locate the
104 trunk. I had signed for it as being delivered to me at the Grand Central Terminal.

Q. So you were charged for the trunk?

A. Yes, sir.

Q. And you made diligent efforts to locate it and were unable to do so?
A. Yes, sir.

Mr. Hall: That is all.
Mr. Aronson: That is all.

CHAS. H. WOOD."

Mr. Marley: I desire to offer in evidence the deposition of Mr. Harry Coale.
Said deposition, omitting caption, jurat and certificate, is in words and figures as follows, to-wit:

"HARRY COALE, being produced, sworn and examined, on the part of the defendant, deposeth and saith as follows:

Direct examination.

Questions by Mr. Aronson:

Q. Where do you reside?
A. Tarrytown, New York.
Q. Employed by the New York Central & Hudson River Railroad Company, the defendant in this action?
A. Yes, sir.
Q. In what capacity?
A. Chief Rate Clerk, passenger department.
Q. Are the tariffs providing for the charges made for the transportation of excess baggage and covering the rules and regulations governing the transportation of baggage compiled under your direction?
A. Yes, sir.
Q. Your answer is yes, sir.
A. Yes, sir.
105 Q. Have you the tariff covering the regulations for the transportation of baggage from New York City to Kansas City, Mo.?
A. Yes, sir.
Q. Have you that tariff before you now?
A. Yes, sir.
Q. Is that tariff filed with the Interstate Commerce Commission?
A. It is.
Q. When was it so filed?
A. March 15, 1910.

Mr. Aronson: I will offer that in evidence (Marked defendant's Exhibit "2").
Said exhibit is identical with exhibits 3 and 4 hereinbefore set out.
Mr. Hall: We object for the reason that it is immaterial to any issues in this case.
Mr. Aronson: I now offer in evidence certified copy of excerpt from New York Central Tariff Number 58, certified by the Chairman of the Interstate Commerce Commission, June 2, 1911, marked "Defendant's Exhibit 3."

Mr. Marley: I offer the title page of said defendant's exhibit 2, and then the participating carriers on page 3 thereof, showing the Atchison, Topeka & Santa Fe Railway Company as one, participating carriers on page 5, showing Michigan Central Railroad Company as one, and issued by the New York Central & Hudson River Railroad Company, the issuing carrier, and I also offer in evidence Sections 4, 5, 6 and 7 of said defendant's Exhibit 3, the same sections as we offered heretofore, and I now offer them as certified copies.

Mr. Hall: To all of which we object for the same reasons pointed out in objections to 3 and 4.

106 The Court: Objections overruled.

Mr. Hall: Plaintiff excepts to the ruling.

Said offer from Defendant's Exhibit 2 is in words and figures as follows, to-wit:

The said title page reads as follows, to-wit:

"Only one" Supplement to this Tariff may be in effect at any time.

N. Y. C. & H. R. R. R., P. S. C. 1 N. Y. No. 41
(Canceling P. S. C. 1 N. Y. No. 24)
N. Y. C. & H. R. R. R., P. S. C. 2 N. Y. No. 496
(Canceling P. S. C. 2 N. Y. No. 209)
West Shore R. R., P. S. C. 2 N. Y. No. 212
(Canceling P. S. C. 2 N. Y. No. 79)
N. Y. C. & H. R. R. R. C. R. C. No. 518
(Canceling C. R. C. No. 361)
N. Y. C. & H. R. R. R. I. C. C. No. 833
(Canceling I. C. C. No. 655)
West Shore R. R. I. C. C. No. 436
(Canceling I. C. C. No. 198)
N. Y. C. Tariff No. 58—First Issue
W. S. Tariff No. 36—First Issue

Canceling Tariff No. 1B, Effective July 1, 1908, and Supplements thereto.

New York Central Lines

The New York Central

New York Central Lines

And Hudson River Railroad Company

Fulton Chain Railway
Fulton Navigation Co.
Raquette Lake Railway
Raquette Lake Transportation Co.

P. S. C. 2 N. Y., P. 1, No. 1
I. C. C. PX 1, No. 1.

107 and
West Shore Railroad
(The N. Y. C. & H. R. R. R. Co., Lessee.)

Local and Joint Tariff
of
Excess Baggage Rates
And Miscellaneous Baggage Service Charges
Between Stations on
The New York Central & Hudson River Railroad
(Not including Boston & Albany R. R.)
Fulton Chain Ry., Fulton Navigation Co., Raquette Lake Ry., Raquette Lake Transportation Co. and
West Shore Railroad
And From Stations on Such Lines
To Destinations in the United States, Canada, Cuba, Mexico and Central America.

Effective April 15, 1910.

Issued at Albany, N. Y. March 15, 1910.

Approved:

GERRIT FORT,
General Passenger Agent,
By W. M. SKINNER,
General Baggage Agent.

And page 3 of the said Exhibit 2, in words and figures, reads as follows, to-wit:

108 "Participating Carriers—Interstate Commerce Commission.

Participating carriers.	Initial lines. N. Y. C. & H. R. R. R. I. X. X. PX 3 No. —.
* * * * * *	* * * * * *
Atchison, Topeka & Santa Fe Ry. Co.	189
Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines)	67
* * * * * *	* * * * * *

And page 5 of the said Exhibit 2, in words and figures reads as follows, to-wit:

"Participating Carriers—Interstate Commerce Commission—Continued.

Participating carriers.	Initial lines. N. Y. C. & H. R. R. R. I. C. C. PX 3 No. —.
* * * * * *	* * *
Michigan Central R. R. Co.	491
* * * * * *	* * * *

And the said Exhibit 3 was then admitted in evidence, and in words and figures reads as follows, to-wit:

"Interstate Commerce Commission.
Washington.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the papers hereto attached contain true and correct copies of Sections 4, 5, 6, 7, pages 11 and 12, of The New York Central and Hudson River Railroad Company N. Y. C. Tariff No. 58—First Issue, I. C. C. 833; West Shore Railroad W. S. Tariff No. 36—First Issue, I. C. C. No. 436, filed with the said Interstate Commerce Commission on March 15th, 1910, and as amended in force from effective date, April 15th, 1910, until canceled May 1st, 1911.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Commission this 2nd day of June, A. D. 1911.

[SEAL.] JUDSON C. CLEMENTS,
Chairman of the Interstate Commerce Commission."

"*Excerpt from N. Y. C. Tariff No. 58, W. S. No. 36, Issued Effective April 15, 1910* (pp. 11-12).

"Sec. 4. Free Baggage Allowance (weight and value)—(*a*) 150 pounds of baggage, not exceeding $100.00 in value, will be carried free in baggage cars for each adult passenger, and 75 pounds, not exceeding $50.00 in value, for each child traveling on a half ticket (unless a lower limit of value is shown in tariff announcing fares), except as follows:

(*b*) On baggage carried between two points in New York State not requiring transit through another State, the limit of value of baggage carried free will be $150.00 for each adult passenger, and $75.00 for each child traveling on a half ticket.

(*c*) These Companies will not accept any greater liability than $50.00 for baggage belonging to one passenger when checked on a commutation or family ticket.

(*d*) No baggage will be transported in connection with low rate excursion tickets where tariff announcing fares so states.

(*e*) On Around-the-World and Trans-Pacific tickets (not including Colonist, Summer Excursion, Convention or other reduced fare tickets to the Pacific Coast, in connection with steamship orders beyond) 350 pounds of baggage will be checked free for each adult passenger and 175 pounds for each child presenting valid transportation, subject to same limit of value as ordinary baggage. Baggage will be checked only by baggagemen at stations and only on presentation of railway ticket and accompanying order or ticket covering steamship transportation, but baggage will not be checked beyond the ports of San Francisco, Seattle, Tacoma or Vancouver (according to route). Officers of the U. S. Army or Navy, en route to the Orient, who use Government Transports from the Pacific Coast, will be entitled only to 150 pounds of baggage free.

Sec. 5. Allowance Account Variation of Scales.—Agents will make no charge when the total weight is less than 160 pounds for a whole ticket, or 80 pounds for a half ticket, allowing 10 pounds on a whole ticket and 5 pounds on a half ticket, to cover possible variation of scales, but in all cases where baggage weighs more than 160 pounds on a whole ticket, or 80 pounds on a half ticket, actual weight over 150 pounds on a whole ticket, or 75 pounds on a half ticket, will be charged for at tariff rates.

Sec. 6. Excess Value.—(*a*) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100 in value as for
111 50 pounds excess weight, adding enough to make rate end in 0 or 5.

(*b*) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the Company will not accept any greater liability than the amounts stated in Section 4, paragraphs (*a*), (*b*), and (*c*).

Sec. 7. Method of Computing Charges for Excess Baggage.—First determine the rate per 100 pounds excess weight or $100.00 excess value in accordance with foregoing instructions and multiply the number of pounds of excess weight, or dollars excess value, by the rate per 100 pounds or $100.00 as case may be, adding enough, when necessary, to make charge end in 0 or 5.

Example: Should a passenger desire to check 250 pounds of baggage between Albany and Buffalo, and state its value at $400.00, the amount to be collected would be as follows:

100 pounds excess baggage at $1.05 per 100 pounds.....	$1.05
Value ($250.00) stipulated in excess of $150.00 at 55 cents (excess baggage rate for 50 pounds) per $100.00.....	1.40
	$2.45"

Mr. Hall: I object to that for the reason that it is immaterial, and because it is not certified according to Acts of Congress.

The Court: Objections overruled.

Mr. Hall: Plaintiff excepts to ruling.

112 Mr. Hall: That is all.

Mr. Aronson: That is all.

H. E. COALE."

Mr. Marley: I offer in evidence the deposition of Mr. Suydam.

Said deposition, omitting caption, jurat and certificate, is in words and figures as follows, to-wit:

"ORSON HENRY SUYDAM, being produced, sworn and examined on the part of the defendant, deposeth and saith, as follows:

Direct examination.

Questions by Mr. Aronson:

Q. Where do you reside?

A. 240 East 245th Street, New York City.

Q. Employed by the New York Central & Hudson River Railroad Company, the defendant in this action?
A. Yes, sir.
Q. In what capacity?
A. As ticket seller.
Q. Where?
A. Grand Central Terminal, New York City.
Q. Were you so employed in September, 1910?
A. I was.
Q. The plaintiff in this action, in her depositions taken on May 8, 1911, has testified that she purchased at the Grand Central Terminal in New York City on September 9, 1910, a ticket from New York City to Kansas City via the New York Central, the Michigan Central and the Santa Fe. Do you know whether you sold her that ticket?

Mr. Hall: Now wait just a minute. I object to that question as it is leading and suggestive.

113 A. I sold a ticket on that day to Kansas City over that route.

Q. Do you know whether or not any other tickets were sold over that route to the same destination on that day?
A. No, there were not.
Q. I show you this ticket and ask you whether this is the one that you sold to the plaintiff (Mr. Aronson shows Mr. Suydam the ticket)?
A. That ticket I sold on September 9, 1910.
Q. And is that the ticket which you testified was the only one that was sold from New York to Kansas City on that day via that route?
A. Yes, sir.
Q. You don't recall the person to whom you sold that ticket?
A. I do not.

Mr. Aronson: I will offer that ticket in evidence (marked def't's Ex. 4).

Mr. Hall: I object to the introduction of the ticket in evidence for the reason that it is not sufficiently identified."

Mr. Hall: There is an objection because it is not properly identified.

Objection overruled; to which ruling of the court plaintiff at the time duly excepted.

Said Defendant's Exhibit 4, being a railroad ticket, was then offered in evidence.

Mr. Marley: I desire to offer the coupons of said ticket reading one from New York to Buffalo over the New York Central & Hudson River Railroad and one from Buffalo to Chicago over the Michi-
gan Central Railroad, and one from Chicago to Kansas City
14 over the Atchison, Topeka and Santa Fe Railway," and offer the reading upon each of the three coupons, and that portion of the contract on the face of the ticket reading as follows:

"Issued by the New York Central & Hudson River Railroad. Good for one passage of the class indicated on coupons attached to Kansas City Missouri, when stamped and sold by an agent holding

written authority as prescribed by law, and presented with coupons attached. Subject to the following Contract:"

Mr. Marley: I only care to call the court's attention to the fifth paragraph on the face of the ticket, which reads as follows:

"5. Baggage liability is limited to wearing apparel not to exceed one hundred (100) dollars in value for a whole ticket and fifty (50) dollars for a half ticket unless a greater value is declared by the owner, and excess charge thereon paid at the time of taking passage."

Each coupon and the contract of said ticket bear the following form numbers, to-wit: Form D 646 C, and each coupon bears the following ticket number, to-wit, "539." On the back of the ticket and each of the coupons appears stamped the following:

"N. Y. CENTRAL .
& H. R. R. R.
Sep. -9-10
Grand Central
Terminal (13)"

"Q. How do you know that you did not sell any other ticket?

A. Because we have a stub record that shows the number of tickets that were sold on that day.

115 Mr. Hall: I wish to move that the testimony of the witness be stricken out as not the best evidence."

Objection overruled; to which ruling of the court plaintiff at the time duly excepted.

"Q. You don't remember anything about it of your own knowledge?

A. I have examined the ticket stub and I find that on that date that was the only ticket sold over this route.

Q. What time were you on duty on that day?

A. I don't recall now. My hours have been from 7 o'clock in the morning to 3:30 one week and from 11 o'clock in the morning until 8 in the evening another week, and that was up until last September. I haven't figured back to see if I was on that day, but I was generally on from 11 until 12 noon.

Q. All you know about that is that the stub record shows that one ticket was sold over the New York Central, the Michigan Central to Chicago and Santa Fe to Kansas City on September 9, 1910, and you know that you sold that ticket?

A. I know that I sold that ticket.

Mr. Hall: I want to renew my motion to strike out the testimony of the witness given on the direct examination on the ground that it is not the best evidence."

Mr. Hall: I want to renew my objection to the testimony given on direct examination on the ground it is not the best evidence.

Objection overruled; to which ruling of the court plaintiff at the time duly excepted.

116 "Cross-examination by Mr. Hall:

Q. Do you remember telegraphing to Chicago for accommodations for anybody at that point?

A. I cannot say that I remember telegraphing especially for any one person. We do so much of that. We telegraph to the western lines and they make reservations for them.

Q. How much was paid for this ticket?

A. $30.75.

Q. Is that the full rate to Kansas City?

A. That is the full rate to Kansas City.

Q. No reduced rate?

A. No.

Q. Do you have any more expensive ticket to Kansas City?

A. Only when they travel on excess fare train.

Q. You pay the excess fare for the privilege of riding on the faster train and the regular fare to Kansas City is $30.75?

A. Yes, sir.

Q. Do you remember whether she was on an excess fare train or not?

A. If I remember correctly it was sold for the 4.30 train in the afternoon, the Wolverine at that time.

Q. Have you read Miss Beaham's depositions?

A. I haven't read it all through.

Q. You have read portions of it?

A. Yes.

Redirect examination by Mr. Aronson:

Q. Mr. Suydam, explain to us the system of stub records that you have spoken of in your testimony here.

A. At the top of each ticket is a stub which bears the same number as the ticket itself from and to destination, and the same form which you tear off after selling the ticket and that acts as
117 our record in balancing our accounts instead of checking off on the case afterwards. This acts as a sort of record of tickets sold. That stub bears the same number and the same form of the ticket. (Mr. Suydam showing ticket). This is now D-646; that compares with the stub of this ticket, just the same as it was on the ticket proper.

Q. So that your stub record shows the complete sales of tickets for each party?

A. Yes, sir. Each man has to turn the stubs over to the office for verification.

Q. And since last September you have examined the stub record?

A. Yes, sir.

Q. Is there something on that ticket to identify it as the one having been sold by you.

A. Yes, sir. The stamp on the back which is my number, No. 13. At that time that was the only form of stamp we were using in the office and we were trying it out. At the present time we are not using the same number.

Q. You have refreshed your recollection as to the number of tickets sold on September 9th last by reference to the stub record.

A. I have, and that was the only ticket sold of this form on that date to that destination. That, of course, covers the whole form of ticket reading to Kansas City. Each ticket has its own form and each destination according to route. That form covers the routing and destination.

Recross-examination by Mr. Hall:

Q. Mr. Suydam, you don't remember anything about this personally, do you?

A. No, I do not.

Q. The only reason that you are testifying that only
118 one ticket was sold on that day is because the stub record only shows that one ticket was sold on that day?

A. Yes, sir.

Q. Then when you testified a moment ago that you had refreshed your recollection you didn't mean to state that you recollected anything about this particular person.

A. Oh, no, I didn't mean to infer that at all. This was the only form of ticket sold on that day. That is what I mean to say.

Mr. Hall: That is all.

Mr. Aronson: That is all.

ORSON H. SUYDAM."

The defendant here rested its case.

Whereupon the plaintiff, to further sustain the issues upon her part, by way of rebuttal, offered evidence as follows:

MARY E. BEAHAM, plaintiff, recalled as a witness in her own behalf, in rebuttal, testified as follows:

Direct examination by Mr. Hall:

Q. Did the defendant company, prior to the institution of this suit, offer to pay you a hundred dollars or any other sum in settlement of this claim?

A. They did not.

Mr. Marley: We are offering to do it any time. We are willing to offer to pay her a hundred dollars now and let the costs go against us.

Q. At the time you purchased your ticket was anything said to you about your baggage?

A. There was not.

119 Q. Was anything said to you about the local and interstate tariff or excess baggage rates or joint passenger tariff 53?

A. There was not.

Mr. Marley: We object to that as incompetent and immaterial.
Objection overruled; to which ruling of the court defendant at the time duly excepted.

Q. Did you know anything about such tariffs?
A. I did not.

Mr. Marley: The same objection.
By Court: Objection overruled.
Mr. Marley: Defendant excepts to the ruling.

Q. Had you ever heard of them?
A. I had not.

Mr. Marley: The same objection.
By Court: Objection overruled.
Mr. Marley: Defendant excepts to the ruling.

Q. Did you see any placards in the Grand Central Station advising you to look for such tariffs?
A. I did not.

Mr. Marley: I will concede she herself did not see the schedules.

Q. Was anything said to you about the value of your baggage, either by the ticket agent or the man who checked your baggage?
A. There was not.
Q. Was anything said to you about the local and interstate tariff and joint baggage tariff No. 53?
A. There was not.

Mr. Marley: That's objected to as incompetent and immaterial.
The Court: Some of those matters are competent and
120 some are not, but I think that question as to whether or not anything was said to her might be competent if your contention is right, that you have an authority.
To which ruling of the court defendant at the time duly excepted.

Witness excused.

At this point the further hearing of this cause was adjourned until Thursday, December 26th, 1912.

INDEPENDENCE, MISSOURI,
Thursday, December 26th, 1912.

Court met, pursuant to adjournment, and the further hearing of this cause was resumed as follows, to-wit:

The Court: Wherever I have postponed the ruling on plaintiff's objection to evidence such objections are overruled and excepted to by the plaintiff.

The above and foregoing was all the evidence offered in the case.
Thereupon, at the request of the plaintiff, and over the objection of the defendant, the court gave the following declarations of law numbered 1 for the plaintiff, to-wit:

Declaration of Law No. 1.

"The court declares the law to be that under the pleadings and th evidence in this case, plaintiff is entitled to recover from the defend ant an amount which represents the reasonable value of her trun and the reasonable value of such articles contained therein as con stituted baggage."

To which action and ruling of the court in giving the said declar tion of law No. 1 the defendant then and there at the time excepte and still excepts.

121 And thereupon, at the request of the plaintiff and ove the objection of the defendant, the court gave the followin declaration of law numbered two, to-wit:

Declaration of Law No. 2.

"The court declares the law to be that baggage consists of suc articles contained in plaintiff's trunk, including articles of jewelr and personal ornament as belonged to and were for the personal us and convenience of plaintiff, either with reference to the immedia necessities of her trip or the ultimate purpose of her journey, and i determining this it is proper to consider the habits and wants of th class of society to which plaintiff belongs and whether such articl were appropriate to the wardrobe, standing and social position plaintiff."

To which action and ruling of the court in giving said declaratio of law numbered 2 the defendant then and there at the time du excepted and still excepts.

And thereupon, at the request of the plaintiff and over the obje tion of the defendant, the court gave the following declaration law numbered 3, to-wit:

Declaration of Law No. 3.

"The court declares the law to be that under the evidence in th case, there was no contract between plaintiff and defendant limitin the liability of said defendant to the sum of $100 in case of loss baggage, unless a greater value should be declared and paid for time of checking."

To which action and ruling of the court in giving the said decl ration of law numbered 3 the defendant then and there at the tin duly excepted and still excepts.

122 And thereupon, at the request of the plaintiff and ov the objection of the defendant, the court gave the followi declaration of law numbered 4, to-wit:

Declaration of Law No. 4.

"The court declares the law to be that even if the local and int state tariffs of excess baggage rates introduced in evidence were fil

with the Interstate Commerce Commission of the United States, and properly posted as required by the Interstate Commerce Act, still plaintiff would be entitled to recover the reasonable value of her trunk and the reasonable value of the articles of baggage contained therein, unless she expressly assented to the provisions of said tariffs limiting the liability of the defendant to $100 for loss of baggage unless a greater value should be declared and paid for."

To which action and ruling of the court in giving the said declaration of law numbered 4 the defendant then and there at the time duly excepted and still excepts.

And thereupon the defendant asked the court to give the following declaration of law numbered 1, to-wit:

1.

"The court declares the law to be that under the pleadings and evidence in this case; the plaintiff can only recover against the defendant, New York Central & Hudson River Railroad Company the sum of $100 damages."

Which said declaration of law numbered 1 the court re-
123 fused to give, to which action and ruling of the court in refusing to give the said declaration of law numbered 1 the defendant then and there at the time duly excepted and still excepts.

And thereupon the defendant requested the court to give the following declaration of law numbered 2, to-wit:

II.

"The court declares the law to be; that under the evidence and pleadings in this case, the finding of facts must be for the plaintiff on her petition and for the defendant, New York Central & Hudson River Railroad Company on its answer, and the court must assess the damages of the plaintiff at the sum of one-hundred ($100) Dollars, only."

Which said declaration of law numbered 2 the court refused to give, to which action and ruling of the court in refusing to give the said declaration of law numbered 2 the defendant then and there and at the time duly excepted and still excepts.

That thereupon the defendant requested the court to give the following declaration of law numbered 3, to-wit:

III.

"The court declares the law to be that on the 9th day of September, 1910, at which time the plaintiff purchased from the defendant, the ticket entitling her to first-class limited passage from New York City in the State of New York to Kansas City, in the State of
124 Missouri, over the line of the defendant New York Central & Hudson River Railroad, the line of Michigan Central Railway, and the line of Atchison, Topeka and Santa Fe Railway, there

was posted and published and in full force and effect and on
in the office of the Interstate Commerce Commission of United Sta
a local and joint Interstate Tariff fixing the price of first-class limi
passage from New York City in the State of New York to Kan
City in the State of Missouri over the aforesaid through lines
carriage at thirty dollars and seventy-five cents ($30.75), for e
adult passenger and that the said tariff so fixing the price per p
senger at thirty dollars and seventy-five cents ($30.75) did
specify and designate the excess baggage rate from the City of N
York to Kansas City over the said line of through carriage at
dollars and fifteen cents ($5.15) for each and every 100 pou
of baggage in excess of the usual and customary allowance; and t
the rules and regulations set out in the said tariff provided as
lows:

150 pounds of baggage will be checked free on each whole tic
and 75 pounds on each half ticket. No single piece of bagg
weighing more than 250 pounds will be checked. Baggage mus
checked through to destination of ticket, except that baggage may
checked to stop-over point as authorized in Rule 31. On bagg
weighing over 150 pounds on each whole ticket and 75 pounds
each half ticket, charge will be made for the excess weight at the
cess baggage rate per 100 pounds shown herein. In c
125 putting excess baggage charges sufficient will be added w
necessary to make same end in 0 or 5. The minimum ex
baggage rate will be 15 cents per hundred pounds and the minim
collection for any shipment will be 25 cents.

The time limits shown herein include the date of sale. For
ample, the time to Kansas City, is 3 days, therefore a ticket sold
the 1st would be punched to expire on the 3rd.

And there was also posted and published and in full force
effect and on file in the office of the Interstate Commerce Com
sion of the United States on said 9th day of September, 1910
local and joint interstate tariff of excess baggage rates, providing
the receiving and carriage of baggage (for passenger holding ti
entitling them to passage) over the through line of carriage d
nated in these instructions subject to the following rules and r
lations which governed and regulated the receipt and transporta
of baggage for such passengers over the said through line of
riage:

Section 4.

(*a*) 150 pounds of baggage not exceeding $100 in value wi
carried free in baggage cars for each adult passenger and 75 po
not exceeding $50 in value for each child traveling on a half-t
(unless a lower limit of value is shown in tariff announcing f
except as follows:

(*b*) On baggage carried between two points in New
126 State not requiring transit through another State, the
of value of baggage carried free will be $150 for each
passenger, and $75 for each child traveling on a half ticket.

(*c*) These companies will not accept any greater liability

$50 for baggage belonging to one passenger when checked on a commutation or family ticket.

(*d*) No baggage will be transported in connection with low rate excursion tickets where tariff announcing fares so states.

(*e*) On Around-the-World and Trans-Pacific tickets (not including Colonist, Summer Excursions, Convention or other reduced fares tickets to the Pacific Coast, in connection with steamship orders beyond) 350 pounds of baggage will be checked free for each adult passenger and 175 pounds for each child presenting valid transportation subject to same limit of value as ordinary baggage. Baggage will be checked only by baggage-men at stations and only on presentation of railway ticket and accompanying order or ticket covering steamship transportation but baggage will not be checked beyond the ports of San Francisco, Seattle, Tacoma and Vancouver (according to route). Officers of the U. S. Army or Navy en route to the Orient who use Government Transports from the Pacific Coast will be entitled only to 150 pounds of baggage free.

Section 6.

(*a*) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be
127 made at the same rate for each $100 in value as for 50 pounds excess weight, adding enough to make rate end in 0 or 5.

(*b*) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the company will not accept any greater liability than the amount stated in Section 4, paragraphs *a*, *b*, and *c*.

And the court further declares the law to be that all and each of the aforesaid rules and regulations were in full force and effect and binding upon both the plaintiff and defendant on the said 9th day of September, 1910. And that by reason of such rules and regulations the plaintiff in this case cannot recover to exceed ($100) one hundred dollars as and for the value of the trunk in question and its contents and damages will be assessed against the defendant in the sum of one hundred ($100) dollars, only."

Which said declaration of law numbered 3 the court refused to give, to which action and ruling of the court in refusing to give said declaration of law numbered 3 the defendant then and there at the time duly excepted and still excepts.

That thereupon the defendant requested the court to give the following declaration of law numbered four, to-wit:

IV.

"The court declares the law to be that if it finds from the evidence that on the 9th day of September, 1910, at which time the
128 plaintiff purchased from the defendant, the ticket entitling her to first-class limited passage from New York City in the State of New York to Kansas City, in the State of Missouri over the

line of the defendant New York Central & Hudson River Railroad, the line of Michigan Central Railway, and the line of Atchison, Topeka and Santa Fe Railway, there was posted and published and in full force and effect and on file in the office of the Interstate Commerce Commission of United States, a local and joint Interstate Tariff fixing the price of first-class limited passage from New York City in the State of New York to Kansas City in the State of Missouri over the aforesaid through lines of carriage at thirty dollars and seventy-five cents ($30.75) for each adult passenger; and finds from the evidence that the said tariff so fixing the price per passenger at thirty dollars and seventy-five cents ($30.75) did also specify and designate the excess baggage rate from the City of New York to Kansas City over the said line of through carriage at five dollars and fifteen cents ($5.15) for each and every 100 pounds of baggage in excess of the usual and customary allowance; and finds from the evidence that the rules and regulations set out in the said tariff provided as follows:

150 pounds of baggage will be checked free on each whole ticket and 75 pounds on each half ticket. No single piece of baggage weighing more than 250 pounds will be checked. Baggage must be checked through to destination of ticket, except that baggage may be checked to stop-over points as authorized in Rule 31.

129 On baggage weighing over 150 pounds on each whole ticket and 75 pounds on each half ticket charge will be made for the excess weight at the excess baggage rate per 100 pounds shown herein. In computing excess baggage charges sufficient will be added when necessary to make same end in 0 or 5. The minimum excess baggage rate will be 15 cents per hundred pounds and the minimum collection for any shipment will be 25 cents.

The time limits shown herein include the date of sale. For example, the time limit to Kansas City is 3 days, therefore a ticket sold on the 1st would be punched to expire on the 3rd.

And further finds from the evidence there was also posted and published and in full force and effect and on file in the office of the Interstate Commerce Commission of the United States on said 9th day of September, 1910, a local and joint Interstate Tariff of excess baggage rates which provided for the receiving and carriage of baggage (for passenger holding ticket entitling them to passage) over the through line of carriage designated in these instructions subject to the following rules and regulations for the receipt and transportation of baggage for such passengers over the said through line of carriage, to-wit:

Section 4.

(*a*) 150 pounds of baggage not exceeding $100 in value will be carried free in baggage cars for each adult passenger and 75 pounds not exceeding $50 in value for each child traveling on a half-

130 ticket (unless a lower limit of value is shown in tariff announcing fares) except as follows:

(*b*) On baggage carried between two points in New York State not requiring transit through another state, the limit of value of bag-

gage carried free will be $150 for each adult passenger, and $75 for each child traveling on a half ticket.

(c) These companies will not accept any greater liability than $50 for baggage belonging to one passenger when checked on a commutation or family ticket.

(d) No baggage will be transported in connection with low rate excursion tickets where tariff announcing fares so states.

(e) On Around-the-World, and Trans-Pacific tickets (not including Colonist, Summer Excursions, Convention or other reduced fare tickets to the Pacific Coast, in connection with steamship orders beyond) 350 pounds of baggage will be checked free for each adult passenger and 175 pounds for each child presenting valid transportation subject to same limit of value as ordinary baggage. Baggage will be checked only by baggagemen at stations and only on presentation of railway ticket and accompanying order or ticket covering steamship transportation but baggage will not be checked beyond the ports of San Francisco, Seattle, Tacoma, and Vancouver (according to route). Officers of the U. S. Army or Navy en route to the Orient who use Government Transports from the Pacific Coast will be entitled only to 150 pounds of baggage free.

131

Section 6.

(a) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100 in value as for 50 pounds excess weight, adding enough to make rate end in 0 or 5.

(b) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the Company will not accept any greater liability than the amount stated in Section 4, paragraphs *a*, *b*, and *c*.

Then by reason of such rules and regulations the plaintiff in this case cannot recover to exceed ($100) one hundred dollars as and for the value of the trunk in question and its contents and damages will be assessed against the defendant in the sum of one hundred dollars ($100), only."

Which said declaration of law numbered 4 the court refused to give, to which action and ruling of the court in refusing to give said declaration of law numbered 4 the defendant then and there at the time excepted and still excepts.

That thereupon the defendant requested the court to give the following declaration of law numbered 5, to-wit:

V.

"The court declares the law to be that if it finds and believes from the evidence that the ticket form "D"-646 C #539 shown in evidence was the ticket purchased by the plaintiff at the office of the
132 defendant at its Grand Terminal Station in the City of New York in the State of New York and used by her for passage from the City of New York in the State of New York over defendant railroad lines and over the Michigan Central Line, and Atchison,

Topeka and Santa Fe Line to Kansas City, Missouri, as shown b
the evidence, then the plaintiff is bound by the limitation on sa
ticket reading as follows:

"Baggage liability is limited to wearing apparel not to exceed $1(
in value for a whole ticket and $50 for a half ticket unless a great
value is declared by the owner and excess charge thereon paid at t
time of taking passage."

And the plaintiff cannot recover to exceed one hundred ($10(
dollars and damages will be assessed against the defendant for t
sum of one hundred ($100) dollars, only."

Which said declaration of law numbered 5 the court refused
give, to which action and ruling of the court in refusing to give sa
declaration of law numbered 5 defendant then and there at the tin
duly excepted and still excepts.

That thereupon the defendant requested the court to give the f
lowing declaration of law numbered 6, to-wit:

VI.

"The court declares the law to be that baggage check No. 620,5
given by the defendant New York Central & Hudson Riv
133 Railroad Company to plaintiff and shown in evidence a
containing the following printed notice on its face, to-wit:

"See conditions on back. Value not stated."

and the following notice on the reverse side thereof, to-wit:

Notice to Passengers.

Baggage consists of a passenger's personal wearing apparel and li
bility is limited to $100 (except a greater or less amount is provid
in tariffs) on full fare ticket, unless a greater value is declared
owner at time of checking and payment is made therefor.

Receptacles which are not securely locked will be accepted f
checking only at owner's risk of loss of contents by pilfering or oth
wise.

Single pieces weighing more than 250 pounds will not be fo
warded.

If excess or storage charges are not paid at checking station, th
will be collected at destination.

If this check is issued on order to call for baggage, it is understo
that the transfer company assumes no liability until it takes p
session of said property at address given and issues its receipt. Th
company assumes no liability until the baggage comes into its p
session.

To avoid storage charges claim baggage at once.

W. M. SKINNER,
General Baggage Agent, Albany, N. Y."

having been received by the plaintiff at 11 o'clock in the morni
of the 9th day of September, 1910, and having been retained by h

while she waited until about the hour of 4:30 P. M. of that
134 day, when she took passage on the defendant's train as shown by the evidence, plaintiff is charged with the knowledge of the restrictions or limitations on such baggage check and under the evidence in this case the plaintiff can not recover to exceed one hundred ($100) dollars and damages will be assessed against the defendant in the sum of one hundred ($100) dollars, only."

Which said declaration of law numbered 6 the court refused to give, to which action and ruling of the court in refusing to give the said declaration of law numbered 6 the defendant then and there at the time duly excepted and still excepts.

And thereupon and on the same day, to-wit: on Thursday, December 26th, 1912, judgment was by the court rendered in favor of the plaintiff, and judgment entered accordingly.

And thereupon and on the same day, to-wit, on Thursday, December 26th, 1912, the defendant filed its motion for new trial, which said motion is in words and figures as follows, to-wit:

STATE OF MISSOURI,
County of Jackson, ss:

In the Circuit Court Within and for said County and State, December, 1912, Term, at Independence.

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant.

Motion for New Trial.

Now comes the New York Central & Hudson River Railroad Com-
pany, the above named defendant, and moves the court to
135 set aside its finding of facts herein and grant this defendant a new trial, and as grounds for such motion assigns the following:

I. The finding of facts is contrary to the evidence.

II. The finding of facts is contrary to law.

III. The finding of facts is contrary to the law and the evidence.

IV. Upon all the evidence the finding of facts should have been for the defendant upon its answer.

V. Upon all of the evidence the damages assessed against the defendant should have been one hundred dollars, only.

VI. The court erred in admitting incompetent evidence offered by the plaintiff over the objection of the defendant.

VII. The court erred in excluding competent evidence offered by the defendant.

VIII. The court erred in giving the declaration of law number 1 asked by the plaintiff, over the objection of defendant.

IX. The court erred in giving the declaration of law num
asked by the plaintiff, over the objection of defendant.
X. The court erred in giving the declaration of law num
asked by the plaintiff, over the objection of the defendant.
XI. The court erred in giving the declaration of law num
asked by the plaintiff, over the objection of the defendant.
XII. The court erred in refusing to give defendant's decla
of law number I.
136 XIII. The court erred in refusing to give defendant'
laration of law number II.
XIV. The court erred in refusing to give defendant's decla
of law number III.
XV. The court erred in refusing to give defendant's decla
of law number IV.
XVI. The court erred in refusing to give defendant's decla
of law number V.
XVII. The court erred in refusing to give defendant's decla
of law number VI.
XVIII. Under the law and the evidence, the action of the
in awarding the plaintiff damages in excess of one hundred
was erroneous.
XIX. Upon all the evidence the finding of facts should hav
for the defendant on the issues of facts presented by defe
answer.
XX. Upon all the evidence the finding of facts against the d
ant on defendant's answer is contrary to the law.

A. S. MARLEY,
Attorney for Defend

And thereupon and on the same day, to-wit: on Thursday, D
ber 26th, 1912, the court, after due consideration thereof, ov
said motion for new trial, to which action, order and ruling
court in so overruling said motion for new trial defendant th
there at the time duly excepted and still excepts.
And thereupon, and on the same day, to-wit: on Thursda
cember 26th, 1912, defendant filed its affidavit for appeal, whi
affidavit is in words and figures as follows, to-wit:

137 STATE OF MISSOURI,
County of Jackson, ss:

In the Circuit Court within and for said County and State, December, 1912, Term, at Independence.

No. 24340.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant.

Affidavit for Appeal.

STATE OF MISSOURI,
County of Jackson, ss:

Albert S. Marley, of lawful age, being first duly sworn upon his oath states that he is the agent of the New York Central & Hudson River Railroad Company, a corporation, the defendant in the above entitled cause number 24340, now pending in the Circuit Court of Jackson County, Missouri, at Independence, wherein the said Mary Edna Beaham is plaintiff, and the said New York Central & Hudson River Railroad Company is defendant; and the affiant as such agent of and for the said New York Central & Hudson River Railroad Company upon his oath further states that the appeal now taken by the said New York Central & Hudson River Railroad Company from the judgment rendered against it by the said Circuit Court in favor of the said Mary Edna Beaham in the above entitled cause is not made for vexation or delay but because the affiant believes that the appellant, New York Central & Hudson River Railroad Company is aggrieved by the said judgment of the said court.

ALBERT S. MARLEY.

Subscribed and sworn to before me this 26th day of December, A. D. 1912.

JAMES B. SHOEMAKER,
Clerk Circuit Court, Jackson County, Missouri,
[SEAL.] By N. M. SHORES, *Deputy.*

138 And thereupon, and on the same day, to-wit: on Thursday, December 26th, 1912, appeal was by the court allowed to the Kansas City Court of Appeals, defendant being given until on or before April 1st, 1913, to file its bill of exceptions.

And thereafter, and during the said December Term, to-wit: on Monday, January 6th, 1913, defendant filed bond in the sum of four thousand ($4,000.00) dollars, and bond approved.

And thereafter, and during the said December Term, to-wit: on Saturday, March 1st, 1913, the court, for good cause shown, made an order of record extending the time of the defendant for filing its bill of exceptions until on or before the first day of the June Term, 1913.

And thereafter, and during the March Term, to-wit: on Wednesday, May 14th, 1913, the court, for good cause shown, made an order of record, extending the time of the defendant for filing its bill of exceptions until on or before the first day of the September Term, 1913.

And comes now the defendant, New York Central & Hudson River Railroad Company, in due time, and presents the foregoing to the Honorable Kimbrough Stone, judge of said court, and prays him to allow and sign the same as its true bill of exceptions in this cause.

Now, therefore, the undersigned judge of the Circuit Court, being fully advised in the premises doth find the foregoing to be a
139 true bill of exceptions on behalf of said defendant, New York Central & Hudson River Railroad Company, and doth sign the same and order that it be filed and be a part of the record in said cause, and the same is filed.

Given under my hand at Independence, Missouri, this 4th day of September, 1913.

KIMBROUGH STONE,
Judge of the Circuit Court of Jackson County, Missouri, at Independence.

8/18/1913.

Approved.
BOWERSOCK, HALL & HOOK.

140 *Index.*

143 And thereafter, to-wit, on the 16th day of October, 1913, the Court made and entered of record, the following, to-wit:

10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Appellant.

Come now the said parties, by their respective attorneys, and after oral argument herein by the respondent said cause is submitted to the Court upon briefs.

And thereafter, to-wit, on the 16th day of February, 1914, the Court made and entered of record the following, to-wit:

10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Appellant.

Appeal from Jackson Circuit Court.

Now at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised

of and concerning the premises doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jackson County rendered be in all things affirmed and stand in full force and effect. It is further considered and adjudged by the Court that the said respondent recover against the said appellant costs and charges herein expended and have therefor execution.

And thereafter to-wit on the 21st day of Feb'y, 1914, appellant filed its motion for a rehearing.

And thereafter, to-wit, on the 4th day of March, 1914, the Court made and entered of record the following, to-wit:

44

10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Appellant.

Now at this day, the Court here having fully considered the appellant's motion for a rehearing herein, doth consider and adjudge that the said motion be and the same is hereby sustained.

And thereafter, to-wit, on the 13th day of October, 1914, the Court made and entered of record the following, to-wit:

10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Appellant.

Now at this day come the parties aforesaid, by their respective attorneys, and after argument on the part of the respondent submit said cause to the Court upon briefs.

And thereafter, to-wit, on the 1st day of February, 1915, the Court made and entered of record the following, to-wit:

10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Appellant.

Appeal from Jackson Circuit Court.

Now at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises doth consider and adjudge that

the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jackson County rendered, be in all things affirmed and
145 stand in full force and effect. It is further considered and adjudged by the Court that the said respondent recover against the said appellant costs and charges herein expended and have therefor execution.

(Opinion filed.)

Which said opinion is in words and figures as follows, to-wit:

146 In the Kansas City Court of Appeals, October Term, 1914.

No. 10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Appellant.

Appeal from Jackson Circuit Court.

Plaintiff, a young lady, was returning from Europe to her home in Kansas City. At the Grand Central Station in New York, she bought of defendant a first class, full fare ticket to Kansas City, Missouri, paying therefor $30.75 the highest and, in fact, the only rate in force over that route between the above named points. Plaintiff also paid an additional charge of $4 for the privilege of riding on a certain fast train known as the "Wolverine Express." She then went to the Baggage agent with these two tickets, and showed them to him, and he checked her trunk to the Grand Avenue Station in Kansas City, Missouri. Plaintiff arrived safely, but her trunk never came. Defendant lost it in some way. Plaintiff sued for the value of the trunk and its contents, and recovered judgment in the trial court, for $1,771.52.

Defendant concedes that it lost the trunk. And there is no dispute over the fact that its contents properly constituted personal baggage, nor is there any contest over the value thereof as found by the trial judge who heard the case without a jury, the same being waived. But defendant contends that its liability is limited to $100 for these reasons. First, because plaintiff's ticket contained a condition limiting defendant's liability to $100, unless plaintiff declared a greater value and paid the excess charge thereon at time of taking
147 passage, and, as plaintiff did not declare a greater value, her acceptance and use of such ticket created a contract between plaintiff and defendant whereby the latter's liability for baggage was limited to $100. Second, because on account of the provisions on the back of plaintiff's baggage check and the "Tariff of Excess Baggage Rates" filed by the defendant with the Interstate Commerce Commission, and plaintiff's failure to declare and pay on a greater value than $100, and the "Joint Passenger Tariff No. 53" fixing passenger rates between New York and Kansas City and establishing rules and

regulations concerning baggage, filed by defendant with said Commission, defendant cannot pay plaintiff more than $100 for the loss of her trunk and baggage without violating the Interstate Commerce Acts and subjecting both itself and plaintiff to punishment thereunder.

Plaintiff denied that her ticket contained the condition alleged by defendant, and there is some contention on her part that this feature of the ticket was not properly proved. But we think it was, and the case will be treated on that basis. The provision on the ticket is as follows: "Baggage liability is limited to wearing apparel not to exceed one hundred dollars in value unless a greater value is declared by the owner and excess charge thereon paid at the time of taking passage."

Plaintiff's baggage check contained on its face, in small type, these words: "See conditions on back. Value not stated." On the back was the following: "Notice to Passengers. Baggage consists of a passenger's personal wearing apparel and liability is limited to $100 (except a greater or less amount is provided in tariffs) on full fare ticket, unless a greater value is declared by the owner at time of checking and payments made therefor. If excess or storage charges are not paid at checking station, they will be collected at destination."

148 At the time plaintiff bought her ticket and checked her trunk, defendant claims that it had published, and had on file with the Interstate Commerce Commission, a "Local and Joint Interstate Tariff of Excess Baggage Rates" providing terms and conditions for receiving and carrying baggage over said railroad, the material portion of which is as follows:

"Section 4—Free Baggage Allowance.

(Weight and Value.)

(*a*) 150 pounds of baggage not exceeding $100.00 in value will be carried free in baggage cars for each adult passenger and 75 pounds not exceeding $50.00 in value for each child travelling on a half-ticket (unless a lower limit of value is shown in tariff announcing fares).

Section 6 (Excess Value).

(*a*) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100.00 in value as for 50 pounds excess weight adding enough to make rate end in 0 or 5.

(*b*) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the company will not accept any greater liability than the amounts stated in Section 4 paragraph (*a*)."

At the time plaintiff bought her ticket and checked her baggage defendant claims that there was published and on file with said Commerce Commission "Joint Passenger Tariff No. 53" fixing the rate of first class passage from New York to Kansas City at $30.75,

the ticket to be limited for passage to three days, and the excess baggage rate per 100 pounds at $5.15 for each 100 pounds in excess of the usual and customary allowance of 150 pounds of free baggage; and said "Joint Passenger Tariff No. 53" contained the following Rules and Regulations:

"No. 3. Baggage.—150 pounds of baggage will be checked free on each whole ticket and 75 pounds on each half ticket. No single piece of baggage weighing more than 250 pounds will be checked.
149 Baggage must be checked through to destination of ticket, except that baggage may be checked to stop over point as authorized in Rule 31.

No. 4. Excessive Baggage.—On baggage weighing over 150 pounds on each whole ticket and 75 pounds on each half ticket charge will be made for the excess weight at the excess baggage rate per 100 pounds shown herein. In computing excess baggage charges sufficient will be added when necessary to make same end in 0 or 5. The minimum excess baggage rate will be 15 cents per hundred pounds and the minimum collection for any shipment will be 25 cents."

The evidence clearly shows that plaintiff did not read the provisions and conditions on the ticket or the baggage check. She merely glanced at the latter to see that it read to "Kansas City Grand Avenue Station." Nothing was said to her by the Baggage Agent as to the value of the trunk and its contents, nor did she say anything to him. She was not aware of any excess charges on account of value above $100, and her trunk was not above the weight limit. Nor did plaintiff actually know, or have any personal knowledge of, or intimation concerning, any excess baggage rates or passenger tariffs, or of defendant's rules and regulations stated by defendant to be on file with the Commerce Commission. She merely paid the sums demanded by defendant when she purchased transportation for herself from New York to Kansas City. The evidence also shows that there was but one passenger rate between those points, to-wit, $30.75 and the $4 extra fare for the privilege of riding on the extra fast train. It further shows that the purchase price of the ticket was the same whether the passenger's baggage was worth $100 or $1,500; that the baggage was checked after the purchase of the ticket and in fact could not be checked until the ticket was purchased and presented to the baggage agent.

The validity of the limitation of defendant's liability to
150 the sum of $100 for the loss of a passenger's trunk of the value of $1,500 in the circumstances of the foregoing facts is the question for decision. The Supreme Court of Massachusetts decided that the fact that a carrier had inserted in its schedule of rates, fares and charges filed and published under the orders of the Interstate Commerce Commission, a statement limiting its liability for baggage to the sum of $100 unless a greater value is declared and excess charges paid, did not make such limitation of liability a part of the established rate binding on the passenger even though he knew of the limitation. Plaintiff greatly relied upon that case in support of the judgment of the trial court.

That case was appealed to the Supreme Court of the United States and the judgment of the Supreme Court of Massachusetts was reversed in an opinion found in 233 U. S. 97, in which it was held that a limitation of liability of carriers for passenger's baggage is covered by the Interstate Commerce Act, and the Carmack Amendment. And that the effect of permitting the carrier to file regulations as to passenger's baggage which limit its liability except on payment of specified rates is not to change the common law rule that the carrier is an insurer against its own negligence but simply that the carrier shall obtain commensurate compensation for the responsibility assumed. And that where charges for full liability as specified in the published tariff are unreasonable, they can only be attacked before the Interstate Commerce Commission. And that a baggage check is sufficient compliance as to passenger's baggage withi- the provision in the Carmack amendment for issuing a receipt or bill of lading for the shipment.

The facts in this case would bring it within the law thus announced, but for the following consideration: viz., that defendant failed to prove, by any competent evidence, that it ever filed a tariff of excess baggage rates with the Interstate Commerce Commission.

It made an effort to furnish the proof, but totally failed
151 on account of the incompetency of the evidence offered; which consisted in what purported to be a copy of the passenger and baggage tariff rate, said to have been filed by defendant with the Interstate Commerce Commission. But the paper was verified by the certificate of the "Chairman of the Interstate Commerce Commission", whereas the Federal statute provides that copies of tariff rates on file with that commission, shall be received in evidence, if certified by the Secretary, under the seal of the commission: 34 U. S. Stat. at Large, sec. 16, Chapt. 3591, P. 592.

Defendant suggests that the "seal" of the commission was attached to this certificate and that made the chairman's certificate evidence under an Act of Congress, that "Copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under the seals of such departments respectively, shall be admitted in evidence equally with the originals thereof". We do not agree to this for the reason that that act is general, applying to all documents in all the executive departments not specifically provided for. It is a rule of construction of statutes that a special provision applying particularly to one thing of a general class, will prevail over a general statute embracing all classes. In the present instance, there is a special provision that copies of records of the Interstate Commerce Commission, to become evidence, must be authenticated by the Secretary of the commission. Again, defendant, by way of excuse for offering the certificate of the Chairman of the Interstate Commerce Commission, states that the Secretary was dead. If any one can be substituted for the statutory officer, the occasion therefor was not shown by defendant. Nothing was shown why a Secretary or a temporary secretary was not selected, on the death of the regular incumbent. There was nearly a year's times between the death of the Secretary and the trial of this cause.

At this stage of the case, defendant falls back on the proposition that the certificate was admitted by the trial court as evi-
152 dence. It is true, it was admitted over plaintiff's objection. But if a trial court admits incompetent evidence, without probative force, it is proper that it should disregard such evidence, as was done in this case, when arriving at a final conclusion.

Still struggling to maintain itself on this vital part of the controversy, defendant insists that since plaintiff did not file a bill of exceptions and appeal from the court's ruling in admitting the certificate of the Chairman, she virtually consented to its being received. The rule of law here invoked by defendant is not applicable. Plaintiff obtained the judgment notwithstanding the adverse ruling during the course of the trial and she had nothing to appeal from. That she never consented that the paper should be considered as evidence is shown by her repeated objection.

What we have written covers plaintiff's additional insistence, likewise fatal to defendant's position, viz., that there was no proof that the tariff rate had been published. The Interstate Commerce Act considered in its entirety, plainly indicates that there must be a publication of the rate as distinguished from posting it. Publication, by printing and promulgating, is one of the steps necessary to establish a rate; and posting is an act after it has been established: U. S. vs. Miller, 23 U. S. 599; Texas & Pac. Ry. vs. Cisco Oil Mill, 204 U. S. 449, 451.

While the shipper, or passenger, must take notice of the rate filed by the carrier and published, yet, until that is done, there is no rate; and hence there is not anything of which he could have notice. And the burden is on the carrier—it is a part of the carrier's case to show the filing and publication of the rate. The law will not presume notice when there is neither place, nor opportunity, where the information with which the party is sought to be charged, can be had.

The foregoing shows that defendant failed to prove that it was within the protection of the Interstate Commerce Act, and our consideration whether it is liable to this action, must be had without regard to that act. We are satisfied that there was no consideration to support an agreement for limited liability. Plaintiff paid for her ticket the regular and only rate for first class passage from New York to Kansas City. Her baggage, nor defendant's liability for its loss, did not affect the price of the ticket. Defendant would have exacted the same fare if she had been without baggage.

If it be admitted that a carrier may reasonably require a
153 passenger to make known the value of his baggage, though it is not more than he has a right to have, so that he may know that fact and also that he may measure his care for it while in his charge, yet that was not the principal thing defendant required by the printed matter on the ticket and check which we have set out. It required that the value over $100 be disclosed, so that it could collect extra charges, or perhaps refuse to carry it. It may be stated, as a matter of law, that $100 is not the maximum value, in all circumstances, which a passenger may require to be taken as

incident to his passage. Therefore, when defendant attempted to require plaintiff to limit herself to $100, or pay extra, it must, if governed by the law in this state, show a consideration for the agreement, and that was not done: McFadden vs. Ry. Co., 92 Mo. 343; George vs. Railroad, 214 Mo. 551; Ward vs. Ry. 158 Mo. 226, 236; Roberts vs. Ry. Co. 148 Mo. App. 96.

But, we need not regard the defect of want of consideration; for we are satisfied that plaintiff, in point of fact, never agreed to the limitation of liability claimed by defendant, and printed on her ticket and baggage check. At common law the transportation of a passenger's baggage went along with the carriage of the passenger himself, and as incident thereto, and the carrier was liable for its loss. But the carrier has a legal right to enter into a contract with a passenger limiting such liability. The expression, that the parties may contract for a limited liability implies, of course, that the passenger must have knowledge of the restriction. That is, the passenger must have his attention called to the restriction. And the mere fact, as in this case, that there is printed on the passenger's ticket and on his baggage check, a statement of limited liability, will not suffice to show the passenger's knowledge and consent: Railroad Co. vs. Campbell, 36 Ohio St. 647; Rawson vs. Penn. Ry. Co. 48 N. Y. 212; Hutchins vs. Pa. Ry. Co. 181 N. Y. 186; Railroad Co. vs. Fraloff, 100 U. S. 24, 27; Ranchan vs. Rutland R. R. Co. 71 Vt. 142; K. C. Ry. Co. vs. Rodebaugh, 38 Kan. 45; Weigland vs. Central R. Co. 75 Fed. 370.

154 Conceding that the transaction between plaintiff and defendant shows an undertaking, under the law of New York, to carry plaintiff to Kansas City, it would not aid the defendant. For, as we have seen, the rule we have stated is the rule of the common law which we will presume exists in that state.

The foregoing views lead to an affirmance of the judgment. All concur.

JAMES ELLISON, *P. J.*

Since the foregoing was written, our attention has been called to the case of Mott Store Co. vs. Railroad, 183 Mo. App. — (168 S. W. 322) decided by the St. Louis Court of Appeals through Judge Allen, in which what we have said above as to the burden being on the carrier to show the filing and publication of rates, is sustained. See also Railroad vs. Horne, 106 Tenn. 73.

And thereafter, to-wit, on the 8th day of February, 1915, appellant filed its motion for a rehearing.

155 And thereafter, to-wit, on the 27th day of February, 1915, the Court made and entered of record the following, to-wit:

10782.

MARY EDNA BEAHAM, Respondent,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD CO., Appellant

Now at this day the Court here having fully considered the appel lant's motion for a rehearing herein doth consider and adjuge tha the said motion be and the same is hereby overruled.

And thereafter, to-wit, on the 6th day of April, 1915, there wa filed in the office of the Clerk of the Kansas City Court of Appeals a Assignment of Errors, which is hereto attached, as follows:

156 In the Kansas City Court of Appeals of the State of Missouri

No. —. At Law.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant.

Assignment of Errors.

Now comes the said New York Central & Hudson River Railroad Company, Plaintiff in Error, and respectfully submits that in the record, proceedings, decisions and final judgment of the Kansas City Court of Appeals, of the State of Missouri in the above entitled matter, there is manifest error in this, to-wit:

First. The Kansas City Court of Appeals erred in holding that the following declaration of law, given by the trial Court at the reques of the plaintiff, and over the objection and exception of defendant to-wit:

"The court declares the law to be that under the pleadings and the evidence in this case, plaintiff is entitled to recover from the defend ant an amount which represents the reasonable value of her trunk and the reasonable value of such articles contained therein as con stituted baggage,"

was a correct declaration of law, applicable to the facts in evidence.

Second. The Kansas City Court of Appeals erred in holding tha the following declaration of law, given by the Trial Court at the re quest of the plaintiff, and over the objection and exception of th defendant, to-wit:

"The court declares the law to be that under the evidence in th case, there was no contract between plaintiff and defendant limitin

the liability of said defendant to the sum of $100 in case of
157 loss of baggage, unless a greater value should be declared and paid for at time of checking,"

was a correct declaration of law, applicable to the facts in evidence.

Third. The Kansas City Court of Appeals erred in holding that the following declaration of law, given by the trial Court at the request of the plaintiff, and over the objection and exception of the defendant, to-wit:

"The court declares the law to be that even if the local and interstate tariffs of excess baggage rates introduced in evidence were filed with the Interstate Commerce Commission of the United States, and properly posted as required by the Interstate Commerce Act, still plaintiff would be entitled to recover the reasonable value of her trunk and the reasonable value of the articles of baggage contained therein, unless she expressly assented to the provisions of said tariffs limiting the liability of the defendant to $100 for loss of baggage unless a greater value should be declared and paid for,"

was a correct declaration of law applicable to the facts in evidence.

Fourth. The Kansas City Court of Appeals erred in holding that the following declaration of law, requested by the defendant, New York Central & Hudson River Railroad Company, and refused by the Trial Court, to-wit:

"The court declares the law to be that under the pleadings and evidence in this case; the plaintiff can only recover against the defendant, New York Central & Hudson River Railroad Company the sum of $100 damages,"

was not a correct declaration of law applicable to the facts in evidence.

Fifth. The Kansas City Court of Appeals erred in holding that the following declaration of law requested by the defendant, New York Central & Hudson River Railroad Company, and refused by the Trial Court, to-wit:

158 "The court declares the law to be that on the 9th day of September, 1910, at which time the plaintiff purchased from the defendant, the ticket entitling her to first-class limited passage from New York City, in the State of New York, to Kansas City, in the State of Missouri, over the line of the defendant New York Central & Hudson River Railroad, the line of Michigan Central Railway, and the line of Atchison, Topeka and Santa Fe Railway, there was posted and published and in full force and effect and on file in the office of the Interstate Commerce Commission of United States a local and joint Interstate Tariff fixing the price of first-class limited passage from New York City in the State of New York to Kansas City in the State of Missouri over the aforesaid through lines of carriage at thirty dollars and seventy-five cents ($30.75), for each adult passenger and that the said tariff so fixing the price per passenger at thirty dollars and seventy-five cents ($30.75) did also specify and designate the excess baggage rate from the City of New

York to Kansas City over the said line of through carriage at fi dollars and fifteen cents ($5.15) for each and every 100 pounds baggage in excess of the usual and customary allowance; and th the rules and regulations set out in the said tariff provided as follow

150 pounds of baggage will be checked free on each whole tick and 75 pounds on each half ticket. No single piece of baggag weighing more than 250 pounds will be checked. Baggage mu be checked through to destination of ticket, except that baggage ma be checked to stop-over point as authorized in Rule 31. On baggag weighing over 150 pounds on each whole ticket and 75 pounds o each half ticket, charge will be made for the excess weight at th excess baggage rate per 100 pounds shown herein. In computin excess baggage charges sufficient will be added when necessary make same end in 0 or 5. The minimum excess baggage rate wi be 15 cents per hundred pounds and the minimum collection f any shipment will be 25 cents.

The time limits shown herein include the date of sale. For e ample, the time limit to Kansas City, is 3 days, therefore a tick sold on the 1st would be punched to expire on the 3rd.

And there was also posted and published and in full force an effect and on file in the office of the Interstate Commerce Commi sion of the United States on said 9th day of September, 1910, local and joint interstate tariff of excess baggage rates, providin for the receiving and carriage of baggage (for passenger holdin ticket entitling them to passage) over the through line of carria designated in these instructions subject to the following rules an regulations which governed and regulated the receipt and transpo tation of baggage for such passengers over the said through line carriage:

Section 4. (*a*) 150 pounds of baggage not exceeding $100 i value will be carried free in baggage cars for each adult passeng and 75 pounds not exceeding $50 in value for each chi
159 traveling on a half-ticket (unless a lower limit of value shown in tariff announcing fares, except as follows:

(*b*) On baggage carried between two points in New York Sta not requiring transit through another State, the limit of value baggage carried free will be $150.00 for each adult passenger, a $75.00 for each child traveling on a half ticket.

(*c*) These companies will not accept any greater liability th $50 for baggage belonging to one passanger when checked on commutation or family ticket.

(*d*) No baggage will be transported in connection with low r excursion tickets where tariff announcing fares so states.

(*e*) On Around-the-World and Trans-Pacific tickets (not inclu ing Colonist, Summer Excursions, Convention or other reduc fares tickets to the Pacific Coast, in connection with steamship ord beyond) 350 pounds of baggage will be checked free for each ad passenger and 175 pounds for each child presenting valid tra portation subject to same limit of value as ordinary baggage. B gage will be checked only by baggage-men at stations and only presentation of railway ticket and accompanying order or tic

covering steamship transportation but baggage will not be checked beyond the ports of San Francisco, Seattle, Tacoma and Vancouver (according to route). Officers of the U. S. Army or Navy en route to the Orient who use Government Transports from the Pacific Coast will be entitled only to 150 pounds of baggage free.

Section 6. (*a*) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100 in value as for 50 pounds excess weight, adding enough to make rate end in 0 or 5.

(*b*) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the company will not accept any greater liability than the amount stated in Section 4, paragraphs *a*, *b*, and *c*.

And the Court further declares the law to be that all and each of the aforesaid rules and regulations were in full force and effect and binding upon both the plaintiff and defendant on the said 9th day of September, 1910. And that by reason of such rules and regulations the plaintiff in this case cannot recover to exceed ($100) one hundred dollars as and for the value of the trunk in question and its contents and damages will be assessed against the defendant in the sum of one hundred ($100) dollars, only,"

was not a correct declaration of law applicable to the facts in evidence.

160 **Sixth.** The Kansas City Court of Appeals erred in holding that the following declaration of law, requested by the defendant, New York Central & Hudson River Railroad Company, and refused by the Trial Court, to-wit:

"The court declares the law to be that if it finds from the evidence that on the 9th day of September, 1910, at which time the plaintiff purchased from the defendant, the ticket entitling her to first-class limited passage from New York City, in the State of New York to Kansas City, in the State of Missouri over the line of the defendant New York Central & Hudson River Railroad, the line of Michigan Central Railway, and the line of Atchison, Topeka and Santa Fe Railway, there was posted and published and in full force and effect and on file in the office of the Interstate Commerce Commission of United States, a local and joint Interstate Tariff fixing the price of first-class limited passage from New York City in the State of New York to Kansas City in the State of Missouri over the aforesaid through lines of carriage at thirty dollars and seventy-five cents ($30.75) for each adult passenger; and finds from the evidence that the said tariff so fixing the price per passenger at thirty dollars and seventy-five cents ($30.75) did also specify and designate the excess baggage rate from the City of New York to Kansas City over the said line of through carriage at five dollars and fifteen cents ($5.15) for each and every 100 pounds of baggage in excess of the usual and customary allowance; and finds from the evidence that the rules and regulations set out in the said tariff provided as follows: 150 pounds of baggage will be checked free on each whole ticket and 75 pounds on each half ticket. No single piece of baggage

weighing more than 250 pounds will be checked. Baggage must b checked through to destination of ticket, except that baggage may b checked to stop-over points as authorized in Rule 31.

On baggage weighing over 150 pounds on each whole ticket an 75 pounds on each half ticket charge will be made for the exce weight at the excess baggage rate per 100 pounds shown herein. I computing excess baggage charges sufficient will be added whe necessary to make same end in 0 or 5. The minimum excess bag gage rate will be 15 cents per hundred pounds and the minimu collection for any shipment will be 25 cents.

The time limits shown herein include the date of sale. For e ample, the time limit to Kansas City is 3 days, therefore a tick sold on the 1st would be punched to expire on the 3rd.

And further finds from the evidence there was also posted an published and in full force and effect and on file in the office of th Interstate Commerce Commission of the United States on said 9 day of September, 1910, a local and joint Interstate Tari 161 of excess baggage rates which provided for the receiving an carriage of baggage (for passenger- holding ticket- entitlin them to passage) over the through line of carriage designated i these instructions subject to the following rules and regulations f the receipt and transportation of baggage for such passengers ov the said through line of carriage, to-wit:

SECTION 4. (*a*) 150 pounds of baggage not exceeding $100 i value will be carried free in baggage cars for each adult passenger an 75 pounds not exceeding $50 in value for each child traveling a a half-ticket (unless a lower limit of value is shown in tariff a nouncing fares) except as follows:

(*b*) On baggage carried between two points in New York Sta not requiring transit through another state, the limit of value baggage carried free will be $150 for each adult passenger, and $ for each child traveling on a half ticket.

(*c*) These companies will not accept any greater liability th $50 for baggage belonging to one passenger when checked on a co mutation or family ticket.

(*d*) No baggage will be transported in connection with low r excursion tickets where tariff announcing fares so states.

(*e*) On Around-the-World, and Trans-pacific tickets (not i cluding Colonist, Summer Excursions, Convention or other reduc fare tickets to the Pacific Coast, in connection with steamship ord beyond) 350 pounds of baggage will be checked free for each ad passenger and 175 pounds for each child presenting valid transpor tion subject to same limit of value as ordinary baggage. Bagga will be checked only by baggagemen at stations and only on pres tation of railway ticket and accompanying order or ticket coveri steamship transportation but baggage will not be checked beyo the ports of San Francisco, Seattle, Tacoma, and Vancouver (acco ing to route). Officers of the U. S. Army or Navy en route to Orient who use Government Transports from the Pacific Coast w be entitled only to 150 pounds of baggage free.

SECTION 6. (*a*) Should a passenger stipulate value of baggage

excess of above free allowance, charge for all such excess should be made at the same rate for each $100 in value as for 50 pounds excess weight, adding enough to make rate end in 0 or 5.

(*b*) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the Company will not accept any greater liability than the amount stated in Section 4, paragraphs *a*, *b*, and *c*.

Then by reason of such rules and regulations the plaintiff in this case cannot recover to exceed ($100) one hundred dollars as and for the value of the trunk in question and its contents and damages will be assessed against the defendant in the sum of one
162 hundred dollars ($100), only", was not a correct declaration of law applicable to the facts in evidence.

Seventh. The Kansas City Court of Appeals erred in holding the joint and local tariff of excess baggage rates applicable between New York City, in the State of New York, and Kansas City, in the State of Missouri, and the rules and regulations with reference thereto, in words and figures as follows, to-wit:

"Local and Joint Tariff
of
Excess Baggage Rates
and Miscellaneous Baggage Service Charges.
Between Stations on
The New York Central & Hudson River Railroad.
(Not including Boston & Albany R. R.)
Fulton Chain Ry., Fulton Navigation Co., Raquette Lake Ry., Raquette Lake Transportation Co., and
West Shore Railroad.
And from Stations on such Lines
To Destinations in the United States, Canada, Cuba, Mexico, and Central America.

Effective April 15, 1910.

Issued at Albany, N. Y., March 15, 1910.

Approved.
GERRIT FORT,
General Passenger Agent.
By W. N. SKINNER,
General Baggage Agent."

Page 3 showing the participating carriers and initial line reads as follows:

"Participating Carriers—Interstate Commerce Commission.

Participating carriers.	Initial lines.
x x x x x	N. Y. C. & H. R. R. R.
x x x x x	I. C. C. Px 3 No. —.
Atchison, Topeka & Santa Fe Ry. Co.	x x x x x
Atchison, Topeka & Santa Fe Ry. Co.	(Coast Lines)."

163 Page 5 showing the participating carriers and initial line reads as follows:

"Participating Carriers—Interstate Commerce Commission Continued.

Participating carriers.	Initial lines.
x x x x x x	N. Y. C. & H. R. R. R. I. C. C. Px 3 No. —.
Michigan Central R. R. Co."	x x x x x

"Excess Baggage Scale.

(See Exceptions on page 11.)

SEC. 2 (*a*) The charge for Excess Baggage must be based on the standard one-way first class limited (not temporarily reduced) fare via route of ticket.

(*b*) The minimum collection for any shipment will be 25 cents.

Where the standard one way first-class limited fare is—		The excess baggage rate per 100 lbs. will be—
From—	To—	
30.61	30.90	5.15"

"SEC 4. Free Baggage Allowance (Weight and Value)—(*a*) 150 pounds of baggage, not exceeding $100.00 in value, will be carried free in baggage cars for each adult passenger, and 75 pounds not exceeding 50.00 in value, for each child traveling on a half ticket (unless a lower limit of value is shown in tariff announcing fares), except as follows:

(*b*) On baggage carried between two points in New York State not requiring transit through another state, the limit of value of baggage carried free will be $150.00 for each adult passenger, and $75.00 for each child traveling on a half ticket.

(*c*) These Companies will not accept any greater liability than $50.00 for baggage belonging to one passenger when checked on a commutation or family ticket.

(*d*) No baggage will be transported in connection with low rate excursion tickets where tariff announcing fares so states.

(*e*) On Around-the-World and Trans-Pacific tickets (not including Colonist, Summer Excursion, Convention or other reduced fare tickets to the Pacific Coast, in connection with the steamship orders beyond) 350 pounds of baggage will be checked free for each adult passenger and 175 pounds for each child presenting valid
164 transportation, subject to same limit of value as ordinary baggage. Baggage will be checked only by baggagemen at stations and only on presentation of railway ticket and accompanying order or ticket covering steamship transportation, but baggage will not be checked beyond the ports of San Francisco, Seattle, Tacoma

or Vancouver (according to routes). Officers of the U. S. Army or Navy, en route to the Orient, who use Government Transports from the Pacific Coast, will be entitled only to 150 pounds of baggage free.

"SEC. 6. Excess Value.—(*a*) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100.00 in value as for 50 pounds excess weight, adding enough to make rate end in 0 or 5."

"(*b*) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the Company will not accept any greater liability than the amount stated in Section 4, paragraphs *a, b,* and *c,*" and certified in the following manner, to-wit.

"Interstate Commerce Commission, Washington.

I, C. A. Prouty, Chairman of the Interstate Commerce Commission, do hereby certify that the document hereto attached is a true copy of The New York Central and Hudson River Railroad Company Tariff No. 58, I. C. C. No. 833 (West Shore Railroad Tariff No. 36, I. C. C. No. 436), filed with the said Interstate Commerce Commission on March 15, 1910, reading as effective April 15, 1910, canceled on May 1, 1911.

And I further certify that said I. C. C. No. 833 was in force and effect, as amended, throughout month of September, 1910.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said commission this 18th day of January, A. D. 1912.

[SEAL.] C. A. PROUTY,

Chairman of the Interstate Commerce Commission."

and admitted in evidence by the Trial Court was null and void, and incompetent as evidence, because of the certificate of the Chairman of the Interstate Commerce Commission aforesaid was a nullity.

Eighth. The Kansas City Court of Appeals erred in assuming and holding that the trial court disregarded the tariffs, rules, and regulations set out in Assignment Number Seventh hereof, and admitted in evidence as competent by the said Trial Court in arriving at its judgment.

165 Ninth. The Kansas City Court of Appeals erred in disregarding as incompetent and as a nullity the evidence set out in the Seventh Assignment of Error herein, and in so doing, has disregarded and treated as a nullity the record of the Trial Court with reference thereto.

Tenth. The Kansas City Court of Appeals erred in not reversing the judgment of the lower court, and remanding the cause with directions to the lower court to enter judgment in favor of the plaintiff and against the defendant in the sum of One Hundred Dollars ($100.00) only.

Eleventh. The Kansas City Court of Appeals erred in holding that no one but the Secretary of the Interstate Commerce Commission could certify, for the purpose of being used in evidence, copies of

Schedules, Tariffs, Rules and Regulations with reference thereto, on file and in force and effect with the Interstate Commerce Commission of the United States.

Twelfth. The Kansas City Court of Appeals erred in holding that the Chairman of the Interstate Commerce Commission could not certify, under his hand, and the Seal of the Commission, when there is a vacancy in the office of the Secretary of said Commission, so as to be used in evidence, copies of Schedules, Tariffs, and Rules and Regulations with reference thereto, in force and effect, and on file with the Interstate Commerce Commission.

Thirteenth. The Kansas City Court of Appeals erred in refusing to give full force and effect, as competent evidence, to the Tariffs and Schedules, and the rules and Regulations with reference thereto, set out in Assignment Number Seventh hereof, when the same
166 had been received in evidence as competent by the Trial Court.

A. S. MARLEY,
JOHN S. MARLEY,
Attorneys for New York Central & Hudson River Railroad Company, Plaintiff in Error.

[Endorsed:] Filed Apr. 6, 1915. L. F. McCoy, Clerk.

167 And thereafter, to-wit, on the same 6th day of April, 1915, there was filed in the office of the Clerk of the Kansas City Court of Appeals a petition for Writ of Error, which is hereto attached, as follows:

168 In the Kansas City Court of Appeals of the State of Missouri.

No. —. At Law.

MARY EDNA BEAHAM, Plaintiff,
vs.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Defendant.

To the Honorable Willis Van Devanter, Justice of the Supreme Court of the United States:

The Petition of the New York Central & Hudson River Railroad Company respectfully shows:

First. That heretofore, to-wit, on Thursday, December 26, 1912, there was tried in the Circuit Court of Jackson County, Missouri, at Independence, a case in which Mary Edna Beaham was plaintiff, and your petitioner, New York Central & Hudson River Railroad Company, a corporation, was defendant.

Second. That said Circuit Court of Jackson County, Missouri, did then and there find the issues for the plaintiff, and did then and there render judgment against the defendant in the sum of Seventeen Hundred Seventy-one and 52/100 Dollars ($1,771.52).

Third. That an appeal was taken by the defendant, New York Central & Hudson River Railroad Company, to the Kansas City Court of Appeals, of the State of Missouri, the said Kansas City Court of Appeals then and there being the highest Court of law in the State of Missouri, in which a decision in this suit and in this matter could be had.

Fourth. That upon said appeal the said Kansas City Court of Appeals did, at its October, 1914, term, in all things, each and singular, affirm the action of the aforesaid Circuit Court of Jackson County, Missouri.

169 Fifth. In said judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of the New York Central & Hudson River Railroad Company, defendant herein, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Sixth. That heretofore application for a Writ of Error to the Supreme Court of the United States was made in this cause to the Honorable James Ellison, presiding Judge of the said Kansas City Court of Appeals, and the said application was by said Honorable James Ellison, presiding Judge aforesaid, denied.

Wherefore, your petitioner prays for the allowance of a Writ of Error from the Supreme Court of the United States to the Kansas City Court of Appeals of the State of Missouri, and to the Judges thereof, to the end that a transcript of record, proceedings, and papers in this cause, duly authenticated, may be removed into the Supreme Court of the United States, and the errors complained of by your petitioner may be examined and corrected and said judgment reversed.

And your petitioner will ever pray.

ALBERT S. MARLEY,
JOHN S. MARLEY,
Attorneys for the New York Central & Hudson River Railroad Company.

[Endorsed:] Filed Apr. 6, 1915. L. F. McCoy, Clerk.

170 And thereafter, to-wit, on the 6th day of April, 1915, there was filed a Writ of Error from the Supreme Court of the United States, which is hereto attached, as follows:

171 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Kansas City Court of Appeals of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Kansas City Court of Appeals of the State of Missouri, before you, or some of you, being the highest court of law or equity of the said State in which a de-

cision could be had in the said suit between Mary Edna Beaham and New York Central & Hudson River Railroad Company, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity
172 was claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said New York Central & Hudson River Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 3rd day of April, in the year of our Lord one thousand nine hundred and fifteen.

April 3, 1915.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by
WILLIS VAN DEVANTER,
Associate Justice of the
Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. October term, 191–. Writ of Error. Filed Apr. 6, 1915. L. F. McCoy, clerk.

6th
173 And thereafter, to-wit, on the 5th day of April, 1915, there was filed a Writ of Error Bond, approved by the Hon. Willis Van Devanter, Justice of the Supreme Court of the United States, and an order of supersedeas, in words and figures, as follows, to-wit:

R—142905.

Know all men by these presents, That we, the New York Central and Hudson River Railroad Company, a corporation, as Principal,

and National Surety Company, a corporation organized and existing under and by virtue of the laws of the state of New York, with principal offices in the City of New York at 115 Broadway, as surety, are held and firmly bound unto Mary Edna Beaham in the sum of Five Thousand ($5,000.00) Dollars, to be paid to the said Mary Edna Beaham, her heirs, executors and administrators, to the payment of which, well and truly to be made, we bind ourselves and successors, jointly and severally by these presents.

Signed with our seals and dated this 31st day of March, A. D. 1915.

Whereas, the above named New York Central and Hudson River Railroad Company, as Plaintiff in Error, has prosecuted a Writ of Error in the Supreme Court of the United States to reverse the judgment rendered by the Kansas City Court of Appeals, of the State of Missouri, in an action wherein Mary Edna Beaham is plaintiff, and New York Central and Hudson River Railroad Company is Defendant:

Now therefore, the conditions of this obligation are such that if the above named New York Central and Hudson River Rail-
174 road Company shall prosecute its said Writ of Error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise, to remain in full force and effect.

NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By A. S. MARLEY, *Its Agent.*
NATIONAL SURETY COMPANY,
By P. O. DRAPER AND
—— MURPHY.

[Seal of the National Surety Company.]

The above and foregoing Bond and Surety is by me approved this third day of April, A. D. 1915, the bond to operate as a supersedeas.

WILLIS VAN DEVANTER,
Justice of the Supreme Court of the United States.

175 Know all men by these presents, that the National Surety Company, a New York Corporation, having its principal office in the City, County and State of New York, doth herein make, constitute and appoint Tom Moonlight Murphy and P. O. Draper, of Kansas City, of the State of Missouri, its true and lawful Attorneys in Fact, with full power and authority to sign, execute, acknowledge and deliver in its name, place and stead, as surety, bonds, undertakings and writings obligatory in the nature thereof, and when said bonds, undertakings and writings obligatory are signed by the said Tom Moonlight Murphy jointly with the said P. O. Draper as such Attorneys in fact, to bind the company as fully and to the same extent as if the same were signed by the President of the Company, sealed with its common seal, and duly attested by its Secretary, and the said Company hereby ratifies and confirms all the acts of the said

181 STATE OF MISSOURI, *sct:*

I, L. F. McCoy, Clerk of the Kansas City Court of Appeals, do hereby certify that the above and foregoing is a full, true and complete transcript of the proceedings of the above entitled cause in said Kansas City Court of Appeals as fully as the same appear of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said Court, at office in Kansas City this 24th day of April, A. D. 1915.

[Seal Kansas City Court of Appeals.]

L. F. McCOY, *Clerk,*
By FRANK M. LUDWICK, *Deputy.*

Endorsed on cover: File No. 24,690. Missouri, Kansas City, Court of Appeals. Term No. 443. New York Central & Hudson River Railroad Company, plaintiff in error, vs. Mary Edna Beaham. Filed April 28th, 1915. File No. 24,690.

No. 118

IN THE

Supreme Court of the United States

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, PLAINTIFF IN ERROR,

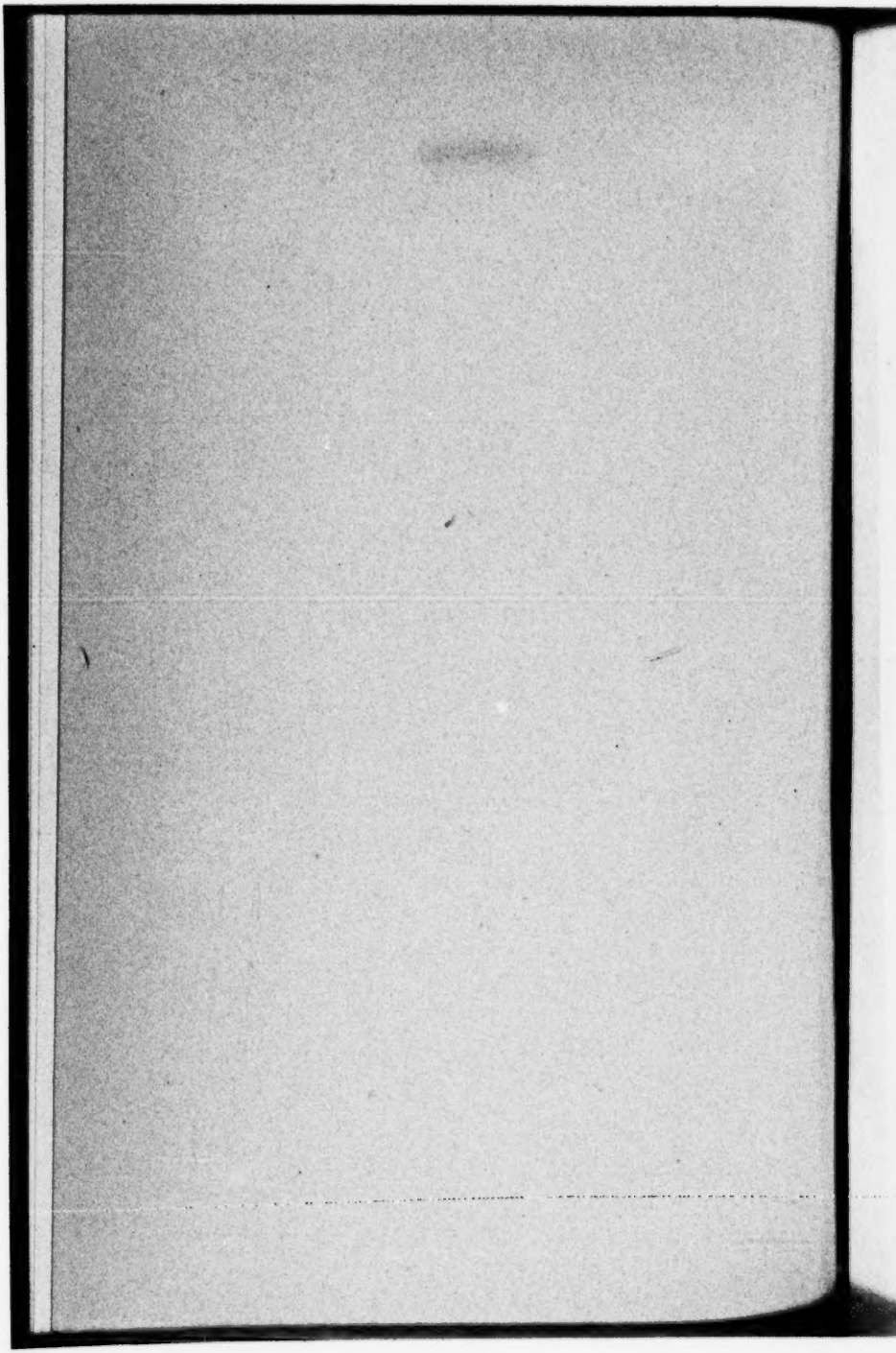
VS.

MARY EDNA BEAHAM, DEFENDANT IN ERROR.

STATEMENT, BRIEF AND ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR.

ALBERT S. MARLEY,
JOHN S. MARLEY,
Attorneys for Plaintiff in Error.

ROBERT J. CARY,
Of Counsel.



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Cases Cited.

No. 443.

IN THE

Supreme Court of the United States

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, PLAINTIFF IN ERROR,

VS.

MARY EDNA BEAHAM, DEFENDANT IN ERROR.

STATEMENT.

The salient facts disclosed by the record and chronologically stated are as follows: The defendant in error (plaintiff in the trial court, and hereinafter designated plaintiff), is a lady of high social standing in Kansas City, Missouri, who having spent the summer of 1910, in Europe, returned to her native country; and, after visiting some friends in the vicinity of the City of New York, went to the Grand Terminal Station (in said city) of the New York Central and Hudson River Railroad Company (the plaintiff in error, hereinafter called the defendant), and purchased a first class limited ticket

from New York City in the State of New York to Kansas City in the State of Missouri, paying therefor $30.75. The ticket read over the New York Central and Hudson River Railroad from New York City to Buffalo, New York, and the Michigan Central Railroad from Buffalo, New York, to Chicago in the State of Illinois, and over the Atchison, Topeka and Santa Fe Railroad from Chicago, Illinois, to Kansas City in the State of Missouri. Having procured her ticket she went to the baggage room of the defendant in the Grand Terminal Station and had her trunk checked from New York City, to Kansas City, Missouri, over the route of her ticket. There is no question but what the defendant received the trunk at the initial point, and that the trunk disappeared and has never been delivered by the defendant to the plaintiff. Because the defendant failed to deliver the trunk, the plaintiff on the Twenty-first day of February, 1911, instituted in the Circuit Court of Jackson County, Missouri, at Independence, her action against the defendant to recover the sum of Fifteen Hundred Ninety-five dollars and Ninety-eight cents ($1595.98) the alleged value of the trunk. The defendant filed its answer admitting the receipt and loss of the trunk; and by way of an affirmative defense made the following pleas:

And defendant further alleges and declares that during the entire month of September, 1910, there was published and in full force and effect and had been in full force and effect since April, 1910, and on file, and had been on file since March, 1910, in the office of the

Inter-State Commerce Commission of the United States, a local and joint Inter-State tariff of excess baggage rates providing terms and conditions for the receiving and carrying baggage over defendants' lines of railroad, as follows:

SECTION 4—FREE BAGGAGE ALLOWANCE.

(weight and value)

(a) 150 pounds of baggage not exceeding $100.00 in value will be carried free in baggage cars for each adult passenger and 75 pounds not exceeding $50.00 in value for each child traveling on a half-ticket (unless a lower limit of value is shown in trariff announcing fares), except as follows:

(b) On baggage carried between two points in New York State not requiring transit through another State, the limit of value of baggage carried free will be $150.00 for each adult passenger and $75.00 for each child traveling on a half ticket.

(c) These companies will not accept any greater liability than $50.00 for baggage belonging to one passenger when checked on a commutation or family ticket.

(d) No baggage will be transported in connection with low rates excursion tickets where tariff announcing fares so states.

(e) On Around-the-World and Trans-Pacific tickets (not including Colonist, Summer Excursions, Convention or other reduced fare tickets to the Pacific Coast, in connection with steamship orders beyond) 350 pounds of baggage will be checked free for each adult passenger

and 175 pounds for each child presenting valid transportation subject to same limit value as ordinary baggage. Baggage will be checked only by baggagemen at stations and only on presentation of railway ticket and accompanying order or ticket covering steamship transportation but baggage will not be checked beyond the ports of San Francisco, Seattle, Tacoma and Vancouver (according to route). Officers of the U. S. Army or Navy en route to the Orient who use Government Transports from the Pacific Coast will be entitled only to 150 pounds of baggage free.

SECTION 6 (EXCESS VALUE).

(a) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100.00 in value as for 50 pounds excess weight adding enough to make rate end in 0 or 5.

(b) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the company will not accept any greater liability than the amounts stated in Section 4 paragraphs (a), (b) and (c).

And defendant further alleges and declares that notwithstanding the said joint, local and Inter-State Commerce Law Tariff was during the entire month of September, 1910, in full force and effect, the plaintiff did not at or prior to the delivery of her said trunk to this defendant, and at or prior to her taking passage on the ticket as hereinbefore mentioned, set out or declare to

this defendant or any person representing this defendant that the value of the said trunk exceeded $100.00 and did not then and there pay or offer to pay to this defendant on the value of the said trunk in excess of $100.00 that was in the said tariff provided.

And defendant further alleges and declares that for defendant to pay to the plaintiff any moneys as and for the value of said trunk in excess of the said sum of $100.00 would be violative of Inter-State Commerce Law of the United States and would thereby subject the plaintiff and this defendant to punishment for said violation of said Inter-State Commerce Law as is by said law provided.

And for fourth and further defense alleges and declares that during the entire month of September, 1910, there was published and in full force and effect and had been in full force and effect since April, 1910; and on file, and had been on file since March, 1910, in the office of the Inter-State Commerce Commission of the United States a local and joint Interstate Tariff of excess baggage rates and which said tariff defined that constituted baggage that would be accepted and carried as baggage over the lines of the defendant railroads as follows, to-wit:

SECTION 9 (BAGGAGE DEFINED).

(a) Baggage consists of wearing apparel, toilet articles and similar effects in actual use and necessary and appropriate for the wear, use, comfort and con-

venience of the passenger for the purposes of the journey, and not intended for other persons, nor for sale.

(b) Money, jewelry, negotiable papers and such valuables, should not be enclosed in baggage to be checked, but carried by the owner or forwarded by Express. The carriers party to this tariff will not be responsible for such articles in baggage.

(c) Baggage must be enclosed in receptacles provided with handles and sufficiently strong to withstand necessary handling—such as trunks, valises, telescopes, suit cases and leather hat boxes.

(d) Receptacles when not securely locked will not be received or checked except with the understanding that no liability will be assumed for loss of articles therefrom.

And defendant further alleges and declares that notwithstanding that said local and joint Interstate Commerce Law Tariff, defined what constituted baggage that would be accepted as baggage from passengers using and proposing to use railroad lines of this defendant and was as hereinbefore set forth during the entire month of September, 1910, in full force and effect, the plaintiff did not at or prior to the delivery of her said trunk to this defendant, and at or prior to her taking passage on the ticket sold to her as hereinbefore mentioned, advise or inform this defendant or any person representing this defendant that the said trunk contained jewelry, or any articles other than wearing apparel, toilet articles and similar effects in actual use and necessary and appropriate for the wearing, use, comfort and convenience

of the plaintiff for the purposes of the journey over the railroad of this defendant.

And defendant further alleges and declares that for defendant to pay to plaintiff any money as and for the value of any jewelry, negotiable papers and such valuables would be in violation of the Interstate Commerce Law of the United States and would thereby subject this defendant to punishment for such violation of the said Interstate Commerce Law as is by the said law provided. That this defendant did prior to the institution of this suit offer to pay and does now offer to pay to this plaintiff the sum of $100.00 for her baggage comprising wearing apparel, toilet articles and similar effects in actual use and necessary and appropriate for the wear, use, comfort and convenience of the plaintiff for the purposes of the journey, and not intended for any other person or for sale, and that for this defendant to pay to plaintiff in excess of $100.00 therefor would be in violation of the Interstate Commerce Law of the United States and would thereby subject this defendant to punishment for such violation of said Interstate Commerce Law as is by said law provided.

Wherefore, the defendant asks that the plaintiff take judgment against the defendant for the sum of one hundred dollars only and that this defendant herein have and recover of the plaintiff herein its costs herein incurred and expended.

And for fifth and further defense defendant alleges and declares that during the entire month of September,

1910, there was published and in full force and effect and had been in full force and effect since December 1st, 1909, and on file and had been on file since October 30th, 1909, in the office of the Inter-State Commerce Commission of the United States joint passenger tariff No. 53 effective over the New York, Central & Hudson River Railway and Michigan Central Railway and Atchison, Topeka & Santa Fe Railway, which said Joint Passenger Tariff provided for and fixed the rate for first class passage from New York City in the State of New York to Kansas City in the State of Missouri over the said New York Central & Hudson River Railway, the said Michigan Central Railway and Atchison, Topeka & Santa Fe Railway at the price and sum per passenger of thirty dollars and seventy-five cents. Said ticket in each instance to be limited for passage to three days; and the said joint passenger tariff did further provide that the excess baggage rate per hundred pounds from New York City in the State of New York to Kansas City in the State of Missouri by the said railway lines should be the sum of five dollars and fifteen cents for each one hundred pounds of baggage in excess of the usual and customary allowance of one hundred and fifty pounds of free baggage. That rules and regulations of the said joint passenger tariff No. 53 provide among other things as follows:

No. 3. BAGGAGE. 150 pounds of baggage will be checked free on each whole ticket and 75 pounds on each half ticket. No single piece of baggage weighing

more than 250 pounds will be checked. Baggage must be checked through to destination of ticket, except that baggage may be checked to stop over point as authorized in Rule 31.

No. 4. EXCESS BAGGAGE. On baggage weighing over 150 pounds on each whole ticket and 75 pounds on each half ticket charge will be made for the excess weight at the excess baggage rate per 100 pounds shown herein. In computing excess baggage charges sufficient will be added when necessary to make same end in 0 or 5. The minimum excess baggage rate will be 15 cents per hundred pounds and the minimum collection for any shipment will be 25 cents.

No. 6. TIME LIMITS. The time limits shown herein include the date of sale. For example, the time limit to Kansas City is 3 days, therefore a ticket sold on the 1st would be punched to expire on the 3rd.

And defendant further alleges and declares that by reasons of the rules, regulations, provisions and conditions for the carrying of excess baggage by the defendant from New York City in the State of New York to Kansas City in the State of Missouri, over the said New York Central & Hudson River Railway, Michigan Central Railway and Atchison, Topeka & Santa Fe Railway as set forth in the third and fourth defenses hereinbefore set out, it became and was the duty of the plaintiff on the said 9th day of September, 1910, when she had her baggage checked over the aforesaid through lines from New York City in the State of New York, to

the City of Kansas City in the State of Missouri, to have notified the agent and representatives of this defendant of the value of the said baggage, and that the said sum was in value in excess of the sum of $100.00 and should have then and there paid or offered to pay to the agent and representatives of this defendant for the transportation of such baggage over the aforesaid through lines of travel from said City of New York to the said City of Kansas City the excess charge therefore as provided in the schedule hereinbefore set out. That the plaintiff herein failed and neglected to so notify the defendant, its agent and representatives and of the value of said trunk and if this defendant should pay to plaintiff any money as and for the value of said trunk in excess of the sum of $100.00 it would be violating the Inter-State Commerce Law of the United States and would thereby subject this plaintiff and this defendant to punishment for such violation of said Inter-State Commerce Law as is by said law provided.

Wherefore, the defendant asks that the plaintiff take judgment against the defendant for the sum of one hundred dollars only and that this defendant herein have and recover of the plaintiff herein its costs herein incurred and expended.

The plaintiff in reply to the special defenses as thus set up by the defendant set up the following pleas:

For further reply to defendant's second defense plaintiff states, that Section seven (7) of the Hepburn Bill (Act of June 29th, 1906, Chapter 3591) amending

Section twenty (20) of the Interstate Commerce Act (34 United States Statutes at large, 595) provides that any common carrier, railroad or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it, or by any common carrier, railroad or transportation company to which said property may be delivered, or over whose line, or lines, such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed, provided; that nothing in this section shall deprive any holder of such receipt or bill of lading, of any remedy, or right of action, which he has under the existing law; that the baggage referred to in the petition herein was received by the defendant for transportation from a point in one state, to-wit; the City of New York, State of New York, to a point in another state, to-wit; the City of Kansas City, State of Missouri, and that the contract, or agreement, alleged in the answer does not exempt said defendant from liability for the loss of said baggage, and constitutes, under the terms of said statute, no defense to this action.

That plaintiff does not know and has no means of knowing whether or not there was published in the office of the Interstate Commerce Commission of the United States, the alleged local and joint interstate tariff of excessive baggage rates set out in the second amended an-

swer, and plaintiff, therefore, denies that there was published and in full force and effect, any such alleged local and joint interstate tariff of excess baggage rates.

That plaintiff denies that it would be in violation of the Interstate Commerce Law of the United States and would subject the plaintiff and defendant to punishment for the violation of said law for defendant to pay any moneys as and for the value of said trunk, in excess of one hundred dollars ($100.00).

For reply to the fourth defense set up in the defendant's second amended answer, plaintiff denies each and every allegation therein contained.

For reply to the fifth defense set up in the defendant's second amended answer, plaintiff denies each and every allegation therein contained.

The questions brought to this court for review involve the action of the trial court in following the rule of law laid down by the Supreme Court of Massachusetts in the case of *Hooker* v. *B. & M. Ry.;* and by reason thereof, refusing the defendant the benefit of the limitations of liability shown in its tariffs, rules and regulations admitted in evidence by the trial court as competent, on the theory that such limitations of liability, set forth in such tariffs, rules and regulations, were rendered null and void by the Carmack Amendment to the Hepburn Bill; and the action of the Kansas City Court of Appeals, after the second submission of the cause, in apparently yielding to the ruling of the United States Supreme Court in the same case of *Hooker* v. *B. & M. RR.*, yet

affirming the judgment of the trial court, by holding such evidence to be incompetent and improperly admitted by the trial court, and assuming that the trial court, after admitting such tariffs, schedules, rules and regulations, in evidence as competent, without making any announcement or order of record indicating a change of its rulings as to the competency of such evidence, nevertheless repented, mentally retraced its steps and disregarded such evidence as incompetent in that fractional part of a minute between the rulings of record, favorable to defendant, made by the trial court, and the writing of the record entry by the clerk of such court, although only defendant appealed.

Under the Practice Act in Missouri, the reply is the last pleading filed. Upon the issues joined the case came on for trial on December 26th, 1912, and the defendant in support of its tendered issues above set out, introduced in evidence the schedules shown on pages 33-34-35-36-46-47-48-58-59-60-61-65-66 and 67 of record.

There is no question but what the schedules introduced in evidence conclusively sustained the issues tendered by the defendant so they will not be set out here, and such being the case we will set out in detail the colloquies when such schedules were offered in evidence and the rulings of the court on such offers. The colloquies were as follows (pages 32 & 33 of Record):

Mr. Marley: I desire to offer in evidence the title page of Exhibit "3" to show the issuing lines and lines

over which it operates, and I desire also to show on page three of the tariff that the Atchison, Topeka & Santa Fe is a participating carrier, on page five that the Michigan Central Railroad Company is also a participating carrier. I desire also to call attention to Section four on page eleven showing the rules and regulations with reference to baggage and excess baggage rates, also Sections five and six with reference to the same subject on page twelve.

Mr. Hall: We wish to object to the introduction of that tariff and those parts in evidence for the reason that they are not binding upon the plaintiff in this case unless they were particularly called to her attention and assented to by her at the time she purchased her ticket.

Mr. Marley: At the present time I think it is competent if those are his only objections, I don't think his objections are well taken.

The Court: Ruling reserved.

Mr. Hall: I object for the further reason it's not shown up to date that these tariffs were properly filed under the Interstate Commerce Act in the places where they should be filed.

The Court: Has that been shown?

Mr. Marley: I will show it. I have certified copies from the Interstate Commerce Commission. I expect to make it competent.

Mr. Hall: My position is that you have not complied with the Interstate Commerce Act in the showing that the schedules were filed and posted in compliance with the act and that if you had shown this, that they

would not be binding upon the plaintiff unless they were expressly assented to by her.

Mr. Marley: When you say "filed and posted," as I understand you, and from the nature of your objections in the depositions, you mean they were not filed and posted in the waiting room of the Grand Terminal Station in New York City in the State of New York.

Mr. Hall: That's one thing, and then I understand up to date you have not taken any testimony to show they were filed before the Interstate Commerce Commission at all.

Mr. Marley: I desire to offer in evidence New York Central tariff 58 and West Shore tariff number 36, a copy of the one just introduced a while ago, certified under the hand and seal of the Interstate Commerce Commission. Said document was here marked by Stenographer Exhibit "4."

Mr. Hall: I object to the introduction of that for the reason it isn't certified under the Acts of Congress.

Mr. Marley: We have a statute in this state which provides that any certified copy from the department under the seal of the department is all that is necessary. The Secretary of the Interstate Commerce Commission at this time is dead and I have a letter from the Chairman to that effect and instead of being certified by the secretary I have that letter.

The Court: I have not examined the method of filing these records that are filed in the office of the Interstate Commerce Commission. If you have filed it prop-

erly here that will be all and we will look at that in your briefs.

Mr. Marley: How do you say it ought to be certified by the Acts of Congress?

Mr. Hall: My idea of what the Acts of Congress require is that if it's a court proceeding, for instance, it has got to be certified under the hand of the judge of the court and the clerk has got to certify that the judge was the judge of the court and the judge has to certify the clerk was the clerk of the court and unless an instrument is so certified it's not admissible in the state court.

The Court: We will take the statute on it, that's all, and then we can get at it.

Mr. Marley: To save incumbering this record won't you concede this tariff here number 58 that has been offered in evidence as Exhibit "4" was the tariff in effect and governing the carriage of baggage from New York City in the State of New York to Kansas City in the State of Missouri, over the New York Central, Michigan Central and Santa Fe?

Mr. Hall: I don't know whether it was in effect or not, Mr. Marley.

Mr. Marley: (pages 33 & 34 of Record) I offer in evidence the title page of this Exhibit "4," and also offer in evidence on page number 3 the list of participating carriers showing the Atchison, Topeka and Santa Fe Railway Company as one of such, and page 5 showing participating carriers and the Michigan Central Railroad Company as one of such and of course, it is a tariff

issued by the New York Central and Hudson River Railroad Company.

The Court: Objections are overruled.

Mr. Hall: Plaintiff excepts to ruling.

The certificate of authentication as to the Exhibit "4" shown on page 36 of the record was in the following form, to-wit (page 36 of Record):

EXHIBIT "4."

"INTERSTATE COMMERCE COMMISSION.
WASHINGTON.

I, C. A. Prouty, Chairman of the Interstate Commerce Commission, do hereby certify that the document hereto attached is a true copy of The New York Central and Hudson River Railroad Company Tariff No. 58, I. C. C. No. 833 (West Shore Railroad Tariff No. 36, I. C. C. No. 436,) filed with the said Interstate Commerce Commission on March 15, 1910, reading as effective April 15, 1910, canceled on May 1, 1911.

And I further certify that said I. C. C. No. 833 was in force and effect, as amended, throughout month of September, 1910.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said commission this 18th day of January, A. D. 1912.

(Seal)

C. A. Prouty,
Chairman of the Interstate Commerce Commission."

The colloquy immediately following the introduction of Exhibit "4" in evidence was as follows (page 36 of Record):

Mr. Hall: To all of which I object for the reason that said tariff is not sufficiently certified under Acts of Congress, and for the further reason that it is not shown that that tariff was properly filed before the Interstate Commerce Commission and in the various stations and places where it was required to be filed by the Interstate Commerce Act and for the further reason that it is not binding on the plaintiff in this case unless it is shown that it was expressly called to the attention of the plaintiff at the time she bought her ticket or checked her trunk and expressly consented to by her.

By the Court: Objection overruled.

Mr. Hall: To which ruling of the court plaintiff excepted.

Mr. Marley: I desire to offer the excess baggage scale on page number ten of said Exhibit "4," showing the excess baggage rate in values or the excess baggage rate per hundred pounds where the rate is between $30.60 and $30.90, the excess baggage rate is $5.15 (page 36 of Record).

Mr. Hall: To which I would like to interpose the same objection as the one just stated.

By the Court: Objection overruled.

By Mr. Hall: To which ruling plaintiff excepts.

Mr. Marley: I desire to offer in evidence Section 4 on page 11 of this Interstate Commerce Tariff, Exhibit "4" (page 36 of Record).

By Mr. Hall: To which I wish to interpose the same objection as the one last stated.

By the Court: Objection overruled.

By Mr. Hall: To which ruling plaintiff excepts.

Mr. Marley: I desire to offer in evidence Section 6 on page 12 of Exhibit "4" (page 37 of Record).

Mr. Hall: I wish to interpose the same objection as the one last stated.

By the Court: Objection overruled.

Mr. Marley: I desire to offer in evidence Section 9 on page 12 of Exhibit "4," defining baggage (page 38 of Record).

Mr. Hall: The same objection. I would like to interpose a further objection and move this be stricken out for the reason it's not shown and cannot be shown that the portions read by the counsel for the defendant are any part of the rate as filed before the Interstate Commerce Commission.

The Court: I don't know. Has it been or not?

Mr. Marley: Certainly; here it is; it says it's filed. I am reading from the one that is certified by the Chairman of the Commerce Commission under the seal of the commission.

Mr. Hall: I claim that that he has read is not any part of any rate, but *is a mere incident of the rate and not in any way binding on us.*

By the Court: Objection overruled.

Mr. Hall: Plaintiff excepts to the ruling.

Mr. Marley: In connection with the testimony of Mr. Lahm, I desire to again offer this Exhibit "3"' It really is the same as Exhibit "4," and there is no use in setting it out in the record excepting that I am offering it as a part of the deposition of Mr. Lahm from which I

am reading, and I presume would be taken subject to the same objections as made to Exhibit "4."

Mr. Hall: Let the record show the same objections are made to Exhibit "3" as were made heretofore to Exhibit "4."

Said Exhibit 3 being joint Passenger Tariff 53, was then introduced in evidence and is identical with Exhibit 4 hereinbefore set out.

The defendant also offered in evidence Exhibit "9" of deposition which is part of tariff 53 set out in full on pages 46-47-48 of the record and the defendant's offer met with the following objection:

Mr. Marley: I desire to offer the title page of Exhibit "9," also on page two showing the participating carriers to be Atchison, Topeka & Santa Fe Railway Company, and on page 5 showing Michigan Central Railroad as a participating carrier and it's issued by the New York Central & Hudson River Railroad and is naturally effective over it, and on page 66 showing the rate to Kansas City with a three days' limit first class to be $30.75 and the excess baggage rate $5.15, and also sections 3 and 4 of the rules and regulations contained on page 10 of the same schedule, which is to the same effect as the other.

Mr. Hall: To all of which we object for the same reasons pointed out to Exhibits "3" and "4."

By the Court: Objection overruled.

Mr. Hall: Plaintiff excepts to ruling.

Mr. Marley: I desire to offer in evidence the Supplement No. 6, being Exhibit 6 attached to the deposition.

Said document was here marked by the stenographer Exhibit "10."

Mr. Hall: We interpose the same objections as to Exhibits "3" and "4."

Mr. Marley: I offer that to show there has been no change governing the ticket and checking of baggage as set forth in passenger tariff 53. I think counsel might concede there is nothing in supplement No. 6 that in any manner affects or modifies tariff No. 53, that is Exhibit "9" in evidence.

Mr. Hall: All right.

The defendant in support of its defenses further introduced in evidence the joint passenger tariff number 53, shown on pages 58-59-60 and 61 of the record certified to in the following manner, to-wit (page 58 of Record):

"INTERSTATE COMMERCE COMMISSION
WASHINGTON.

I, C. A. Prouty, Chairman of the Interstate Commerce Commission, do hereby certify that the document hereto attached is a true copy of Joint Passenger Tariff No. 53, C. L. Hunter, Agent, I. C. C. No. A-15, filed on November 1, 1909, reading as effective December 1, 1909, canceled by I. C. C. No. A-33 on August 1, 1911.

And I further certify that said I. C. C. No. A-15 was in force and effect, as amended, throughout month of September, 1910.

In witness whereof, I have hereunto set my hand and affixed the seal of said Commission this 18th day of January, A. D. 1912.

(Seal)

C. A. Prouty,
Chairman of the Interstate Commerce Commission.

To the evidence the plaintiff made the following objection:

Mr. Hall: To which I wish to interpose the same objections as to Exhibits 3 and 4.

The Court: The objections are overruled.

Mr. Hall: Plaintiff excepts to the ruling.

Defendant again offered in evidence certain portions of its Exhibit "3." (See pages 64-65 and 66 of the Record). The colloquy with reference thereto being as follows:

Mr. Marley: I offer the title page of said defendant's Exhibit 2, and then the participating carriers on page 3 thereof, showing the Atchison, Topeka & Santa Fe Railway Company as one, participating carriers on page 5, showing Michigan Central Railroad Company as one, and issued by the New York Central & Hudson River Railroad Company, the issuing carrier, and I also offer in evidence Sections 4, 5, 6 and 7, of said defendant's Exhibit 3, the same sections as we offered heretofore, and I now offer them as certified copies.

Mr. Hall: To all of which we object for the same reasons pointed out in objections to 3 and 4.

The Court: Objections overruled.

Mr. Hall: Plaintiff excepts to the ruling.

The said Exhibit "3" was again admitted in evidence by the court and was authenticated in the following manner, to-wit (See page 67 of Record):

"INTERSTATE COMMERCE COMMISSION
WASHINGTON.

I, Judson C. Clements, Chairman of the Interstate Commerce Commission, do hereby certify that the papers hereto attached contain true and correct copies of Sections 4, 5, 6, 7, pages 11 and 12, of The New York Central and Hudson River Railroad Company N. Y. C. Tariff No. 58---First Issue, I. C. C. 833; West Shore Railroad W. S. Tariff No. 36---First Issue, I. C. C. No. 436, filed with the said Interstate Commerce Commission on March 15th, 1910, and as amended in force from effective date, April 15th, 1910, until canceled May 1st, 1911.

In witness whereof, I have hereunto set my hand and affixed the seal of said Commission this 2nd day of June, A. D. 1911.

(Seal) Judson C. Clements,
Chairman of the Interstate Commerce Commission.

By virtue of the Acts of Congress the Interstate Commerce Commission had at the times in question and on the second day of June, 1908, authority to modify the requirements as to publishing posting and filing of tariff and in the exercise of such authority it prescribed a form of notice to be posted up in the various stations of Railroad Companies (see pages 41-42-43 of Record) which form of notice as prescribed by the commission it will be found (on pages 39 and 44 of the Record) to have been posted properly and no point was made by the plaintiff's attor-

ney as to the size of the type with which said notices was printed (See page 44 of Record).

It will be noted that all the objections made by the plaintiff were overruled by the court and all of the schedules offered by the defendant were by the court admitted in evidence as competent over the objections of the plaintiff and finally the court made its position clear on the question of the competency of the evidence at the close of the case, and after all the evidence was in, by making the following ruling: "Wherever I have postponed the ruling on plaintiff's objections to evidence, such objections are overruled and excepted to by the plaintiff." Immediately thereafter the plaintiff asked and the court gave over the separate objections and separate exceptions of the defendant, the following declarations of law, numbers 1, 3, and 4.

DECLARATION OF LAW NO. 1.

"The court declares the law to be that under the pleadings and the evidence in this case, plaintiff is entitled to recover from the defendant an amount which represents the reasonable value of her trunk and the reasonable value of such articles contained therein as constituted baggage."

DECLARATION OF LAW NO. 3.

"The court declares the law to be that under the evidence in this case, there was no contract between plaintiff and defendant limiting the liability of said defendant to the sum of $100 in case of loss of baggage, unless a greater value should be declared and paid for at time of checking."

DECLARATION OF LAW NO. 4.

"The court declares the law to be that *even if the local and interstate tariffs of excess baggage rates introduced in evidence were filed with* the Interstate Commerce Commission of the United States, and *properly posted* as required by the Interstate Commerce Act, still plaintiff would be entitled to recover the reasonable value of her trunk and the reasonable value of the articles of baggage contained therein, *unless she expressly assented to the provisions of said tariffs* limiting the liability of the defendants to $100 for loss of baggage unless a greater value should be declared and paid for."

And the defendant at the same time asked the court to give and the court refused to give the following declaration of law, to-wit:

I.

"The court declares the law to be that under the pleadings and evidence in this case, the plaintiff can only recover against the defendant, New York Central & Hudson River Railroad Company the sum of $100 damages."

II.

"The court declares the law to be; that under the evidence and pleadings in this case, the finding of facts must be for the plaintiff on her petition and for the defendant, New York Central & Hudson River Railroad Company on its answer, and the court must assess the damages of the plaintiff at the sum of one hundred ($100) dollars, only."

III.

"The court declares the law to be that on the 9th day of September, 1910, at which time the plaintiff purchased from the defendant, the ticket entitling her to first-class limited passage from New York City in the State of New York to Kansas City, in the State of Missouri, over the line of the defendant, New York Central & Hudson River Railroad, the line of Michigan Central Railway, and the line of Atchison, Topeka and Santa Fe Railway, there was posted and published and in full force and effect and on file in the office of the Interstate Commerce Commission of United States a local and joint interstate tariff fixing the price of first-class limited passage from New York City in the State of New York to Kansas City in the State of Missouri over the aforesaid through lines of carriage at thirty dollars and seventy-five cents ($30.75), for each adult passenger and that the said tariff so fixing the price per passenger at thirty dollars and seventy-five cents ($30.75) did also specify and designate the excess baggage rate from the City of New York to Kansas City over the said line of through carriage at five dollars and fifteen cents ($5.15) for each and every 100 pounds of baggage in excess of the usual and customary allowance; and that the rules and regulations set out in said tariff provided as follows:

150 pounds of baggage will be checked free on each whole ticket and 75 pounds on each half ticket. No single piece of baggage weighing more than 250

pounds will be checked. Baggage must be checked through to destination of ticket, except that baggage may be checked to stop-over point as authorized in Rule 31. On baggage weighing over 150 pounds on each whole ticket and 75 pounds on each half ticket, charge will be made for the excess weight at the excess baggage rate per 100 pounds shown herein. In computing excess baggage charges sufficient will be added when necessary to make same end in 0 or 5. The minimum excess baggage rate will be 15 cents per hundred pounds and the minimum collection for any shipment will be 25 cents.

The time limits shown herein include the date of sale. For example, the time limit to Kansas City, is 3 days, therefore a ticket sold on the 1st would be punched to expire on the 3rd.

And there was also posted and published and in full force and effect and on file in the office of the Interstate Commerce Commission of the United States on said 9th day of September, 1910 (a local and joint interstate tariff of excess baggage rates, providing for the receiving and carriage of baggage for passengers holding ticket entitling them to passage) over the through line of carriage designated in these instructions subject to the following rules and regulations which governed and regulated the receipt and transportation of baggage for such passengers over the said through line of carriage:

Section 4:

(a) 150 pounds of baggage not exceeding $100 in value will be carried free in baggage cars for each adult passenger and 75 pounds not exceeding $50 in value for each child traveling on a half-ticket (unless a lower limit of value is shown in tariff announcing fares, except as follows:

(b) On baggage carried between two points in New York State not requiring transit through another state, the limit of value of baggage carried free will be $150 for each adult passenger, and $75 for each child traveling on a half ticket.

(c) These companies will not accept any greater liability than $50 for baggage belonging to one passenger when checked on a commutation or family ticket.

(d) No baggage will be transported in connection with low rate excursion tickets where tariff announcing fares so states.

(e) On Around-the World and Trans-Pacific tickets (not including Colonist, Summer Excursions, Convention or other reduced fares tickets to the Pacific Coast, in connection with steamship orders beyond) 350 pounds of baggage will be checked free for each adult passenger and 175 pounds for each child presenting valid transportation subject to same limit of value as ordinary baggage. Baggage will be checked only by baggagemen at stations and only on presentation of railway ticket and accompanying order or ticket covering steamship transportation but baggage will not be checked beyond the ports of San Francisco, Seattle,

Tacoma and Vancouver (according to route). Officers of the U. S. Army or Navy en route to the Orient who use Government transports from the Pacific Coast will be entitled only to 150 pounds of baggage free.

Section 6:

(a) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100 in value as for 50 pounds excess weight, adding enough to make rate end in 0 or 5.

(b) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the company will not accept any greater liability than the amount stated in Section 4, paragraphs a, b and c.

And the court further declares the law to be that all and each of the aforesaid rules and regulations were in full force and effect and binding upon both the plaintiff and defendant on the said 9th day of September, 1910. And that by reason of such rules and regulations the plaintiff in this case cannot recover to exceed ($100) one hundred as and for the value of the trunk in question and its contents and damages will be assessed against the defendant in the sum of one hundred ($100) dollars, only."

IV.

"The court declares the law to be that if it finds from the evidence that on the 9th day of September, 1910, at which time the plaintiff purchased from the defendant, the ticket entitling her to first-class limited

passage from New York City in the State of New York to Kansas City in the State of Missouri over the line of the defendant, New York Central & Hudson River Railroad, the line of Michigan Central Railway, and the line of Atchison, Topeka and Santa Fe Railway, there was posted and published and in full force and effect and on file in the office of the Interstate Commerce Commission of United States, a local and joint interstate tariff fixing the price of first-class limited passage from New York City in the State of New York to Kansas City in the State of Missouri over the aforesaid through lines of carriage at thirty dollars and seventy-five cents ($30.75) for each adult passenger; and finds from the evidence that the said tariff so fixing the price per passenger at thirty dollars and seventy-five cents ($30.75) did also specify and designate the excess baggage rate from the City of New York to Kansas City over the said line of through carriage at five dollars and fifteen cents ($5.15) for each and every 100 pounds of baggage in excess of the usual and customary allowance; and finds from the evidence that the rules and regulations set out in the said tariff provided as follows:

150 pounds of baggage will be checked free on each whole ticket and 75 pounds on each half ticket. No single piece of baggage weighing more than 250 pounds will be checked. Baggage must be checked through to destination of ticket, except that baggage may be checked to stopover points as authorized in Rule 31.

On baggage weighing over 150 pounds on each whole ticket and 75 pounds on each half ticket charge will be made for the excess weight at the excess baggage rate per 100 pounds shown herein. In computing excess baggage charges sufficient will be added when necessary to make same end in 0 or 5. The minimum excess baggage rate will be 15 cents per hundred pounds and the minimum collection for any shipment will be 25 cents.

The time limits shown herein include the date of sale. For example, the time limit to Kansas City is 3 days, therefore, a ticket sold on the 1st would be punched to expire on the 3rd.

And further finds from the evidence there was also posted and published and in full force and effect and on file in the office of the Interstate Commerce Commission of the United States on said 9th day of September, 1910, a local and joint interstate tariff of excess baggage rates which provided for the receiving and carriage of baggage (for passenger holding ticket entitling them to passage) over the through line of carriage designated in these instructions subject to the following rules and regulations for the receipt and transportation of baggage for such passengers over the said through line of carriage, to-wit:

Section 4:

(a) 150 pounds of baggage not exceeding $100 in value will be carried free in baggage cars for each adult passenger and 75 pounds not exceeding $50 in value for each child traveling on a half-ticket (unless

a lower limit of value is shown in tariff announcing fares) except as follows:

(b) On baggage carried between two points in New York State not requiring transit through another state, the limit of value of baggage carried free will be $150 for each adult passenger, and $75 for each child traveling on a half ticket.

(c) These companies will not accept any greater liability than $50 for baggage belonging to one passenger when checked on a commutation or family ticket.

(d) No baggage will be transported in connection with low rate excursion tickets where tariff announcing fares so states.

(e) On Around-the-World, and Trans-Pacific tickets (not including Colonist, Summer Excursions, Convention or other reduced fare tickets to the Pacific Coast, in connection with steamship orders beyond) 350 pounds of baggage will be checked free for each adult passenger and 175 pounds for each child presenting valid transportation subject to same limit of value as ordinary baggage will be checked only by baggagemen at stations and only on presentation of railway ticket and accompanying order or ticket covering steamship transportation but baggage will not be checked beyond the ports of San Francisco, Seattle, Tacoma and Vancouver (according to route). Officers of the U. S. Army or Navy en route to the Orient who use Government transports from the Pacific Coast will be entitled only to 150 pounds of baggage free.

Section 6:

(a) Should a passenger stipulate value of baggage in excess of above free allowance, charge for all such excess should be made at the same rate for each $100 in value as for 50 pounds excess weight, adding enough to make rate end in 0 or 5.

(b) If passenger does not declare value of baggage it will be assumed not to exceed the free allowance and the Company will not accept any greater liability than the amount stated in Section 4, paragraphs a, b and c.

Then by reason of such rules and regulations the plaintiff in this case cannot recover to exceed ($100) one hundred dollars as and for the value of the trunk in question and its contents and damages will be assessed against the defendant in the sum of one hundred dollars ($100), only."

Which said declarations of law numbered 1, II, III and IV the court refused to give, to which action and ruling of the court in refusing to give said declarations of law numbered I, II, III and IV, the defendant then and there at the time excepted and still excepts.

Immediately upon refusal of the foregoing instructions asked by the defendant the court entered judgment for the plaintiff and against the defendant. Immediately on the same day, to-wit, December 26th, 1912, a motion for new trial was filed by the defendant and the same was on the same day by the court overruled. And on the same day the defendant filed an affidavit for appeal and its appeal was allowed to the Kansas City Court

of Appeals. There is no question as to the proper assignment of errors in the motion for new trial, neither is there any question but what the cause was properly before the Kansas Court of Appeals. The Kansas City Court of Appeals influenced by and following the Massachusetts decision in the Hooker case, on the 16th day of February, 1914, affirmed the judgment of lower court; but defendant on the 21st day of February, 1914, filed a motion for a rehearing and the opinion of the Kansas City Court of Appeals was withdrawn and a rehearing granted on March 4th, 1914. On the 6th day of April, 1914, this court reversed the Massachusetts decision in the Hooker case. The Kansas City Court of Appeals after a second submission of the cause and on February 1st, 1915, affirmed the judgment of the trial court by assuming the trial court at some instant of time between the refusal of the instructions asked and the act of entering judgment immediately thereafter concluded it had erred in admitting in evidence the tariffs, rules and regulations and silently disregarded such evidence in entering judgment without making any order of record indicating a change of ruling. Judge Ellison in his opinion stated: "The Supreme Court of Massachusetts decided that the fact a carrier had inserted in its schedule of rates, fares and charges, filed and published under orders of Interstate Commerce Commission, a statement limiting its liability for baggage to the sum of $100 unless a greater value is declared, and excess charges paid did not make such limitation of liability a part of the established rate binding on the passenger even though he

knew of the limitation. Plaintiff greatly relied upon that case in support of the judgment of the trial court." In fact, the Hooker case was the controlling case that induced the action of the trial judge in refusing defendant's declarations of law and in giving plaintiff's declarations of law above set out. Between the time of the submission of the cause to the Kansas City Court of Appeals and the writing of the opinion by Judge Ellison, the Hooker case was reversed by this court and naturally the defendant expected a reversal of this case by the Kansas City Court of Appeals. However, it affirmed the judgment of the lower court, and while apparently submitting to the ruling of this court, it undertook to deprive the defendant of any benefit from the ruling of this court in the Hooker case by holding as follows:

The facts in this case would bring it within the law thus announced, but for the following consideration: viz., that defendant failed to prove, by any competent evidence, that it ever filed a tariff of excess baggage rates with the Interstate Commerce Commission. It made an effort to furnish the proof, but totally failed on account of the incompetency of the evidence offered; which consisted in what purported to be a copy of the passenger and baggage tariff rate, said to have been filed by defendant with the Interstate Commerce Commission. But the paper was verified by the certificate of the "Chairman of the Interstate Commerce Commission," whereas the Federal statute provides that copies of tariff rates on file with that commission, shall be received in evidence, if

certified by the Secretary, under the seal of the commission; 34 U. S. Stat. at Large, Sec. 16, Chapt. 3591, p. 592.

Defendant suggests that the "seal" of the commission was attached to this certificate and that made the chairman's certificate evidence under an Act of Congress, that "Copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under the seals of such departments respectively, shall be admitted in evidence equally with the originals thereof." We do not agree to this for the reason that that act is general, applying to all documents in all the executive departments not specifically provided for. It is a rule of construction of statutes that a special provision applying particularly to one thing of a general class, will prevail over a general statute embracing all classes. In the present instance, there is a special provision that copies of records of the Interstate Commerce Commission, to become evidence, must be authenticated by the secretary of the commission. Again, defendant, by way of excuse for offering the certificate of the Chairman of the Interstate Commerce Commission, states that the secretary was dead. If any one can be substituted for the statutory officer, the occasion therefor was not shown by defendant. Nothing was shown why a secretary or a temporary secretary was not selected, on the death of the regular incumbent. There was nearly a year's time between the death of the secretary and the trial of this cause. At this state of the case, defendant falls back on the proposition that, the

certificate was admitted by the trial court as evidence. It is true, it was admitted over plaintiff's objection. But if a trial court admits incompetent evidence, without probative force, it is proper that it should disregard such evidence, as was done in this case, when arriving at a final conclusion.

Still struggling to maintain itself on this vital part of the controversy, defendant insists that since plaintiff did not file a bill of exceptions and appeal from the court's ruling in admitting the certificate of the chairman, she virtually consented to its being received. The rule of law here invoked by defendant is not applicable. Plaintiff obtained the judgment notwithstanding the adverse ruling during the course of the trial and she had nothing to appeal from. That she never consented that the paper should be considered as evidence is shown by her repeated objection.

What we have written covers plaintiff's additional insistence, likewise fatal to defendant's position, viz., that there was no proof that the tariff rate had been published. The Interstate Commerce Act considered in its entirety, plainly indicates that there must be a publication of the rate as distinguished from posting it. Publication, by printing and promulgating, is one of the steps necessary to establish a rate; and posting is an act after it has been established; *U. S.* v. *Miller,* 23 U. S. 599; *Texas & Pac. Ry.* v. *Cisco Oil Mill,* 204 U. S. 449, 451.

While the shipper, or passenger, must take notice of the rate filed by the carrier and published, yet, un-

til that is done, there is no rate; and hence there is not anything of which he could have notice. And the burden is on the carrier—it is a part of the carrier's case to show the filing and publication of the rate. The law will not presume notice when there is neither place, nor opportunity, where the information with which the party is sought to be charged, can be had.

Not being able to secure a rehearing on the second opinion filed in the Kansas City Court of Appeals, the case has been brought to this court on writ of error.

ASSIGNMENT OF ERRORS.

The errors assigned were as shown on pages 94 to 102 inclusive of the record, but, to avoid prolixity, briefly and substantially stated as follows:

1. The Court of Appeals erred in holding that the declaration of law (hereinbefore set out in this statement as number 1) given by the trial court at the request of the plaintiff and over the exception and objection of the defendant was a correct declaration of law applicable to facts in the evidence.

2. The Court of Appeals erred in holding that the declaration of law (hereinbefore set out in this statement as number 3) given by the trial court at the request of the plaintiff over the objection and exception of the defendant was a correct declaration of law applicable to the facts in evidence.

3. The Kansas City Court of Appeals erred in holding that the declaration of law (hereinbefore set out in this statement as number 4) given by the trial court at the request of the plaintiff and over the objection and exception of the defendant, was a correct declaration of law applicable to the facts in evidence.

4. The Court of Appeals erred in holding that the declaration of law (hereinbefore set out in this statement as number 1) requested by the defendant and refused by the trial court was not a correct declaration of law applicable to the facts in evidence.

5. That the Court of Appeals erred in holding that the declaration of law (hereinbefore set out in this statement as number III) requested by the defendant and refused by the trial court was not a correct declaration of law applicable to the facts in evidence.

6. That the Court of Appeals erred in holding that the declaration of law (hereinbefore set out in this statement as number IV) requested by the defendant and refused by the trial court was not a correct declaration of law applicable to the facts in evidence.

7. The Court of Appeals erred in holding that the joint and local tariff of excess baggage rates applicable between New York City and the State of New York and Kansas City in the State of Missouri, their rules and regulations thereto (and the certificate of C. A. Prouty, Chairman of the Interstate Commerce Commission, attached thereto) as shown on pages 99 and 101 of the record admitted in evidence by the trial court was null and void and incompetent as evidence because the certificate of the Chairman of the Interstate Commerce Commission, aforesaid, is a nullity.

8. The Kansas City Court of Appeals erred in holding and assuming that the trial court in arriving at its judgment disregarded the tariff, rules and regulations set out in 7th assignment of error (pages 99, 100 and 101 of Record) and admitted in evidence as competent by the trial judge.

9. The Court of Appeals erred in disregarding as incompetent and as a nullity the evidence set out in the

said seventh assignment of error and in so doing disregarded and treated as a nullity the record of the trial court with reference thereto.

10. The Court of Appeals erred in not reversing the judgment of the lower court and remanding the cause with directions to the lower court to enter judgment against the defendant in the sum of one hundred ($100.00) dollars, only.

11. The Court of Appeals erred in holding that no one except the Secretary of the Interstate Commerce Commission could certify for the purpose of being used in evidence, copies of schedules, tariffs, rules, and regulations with reference thereto, on file and in force and effect with the Interstate Commerce Commission of the United States.

12. The Court of Appeals erred in holding that the Chairman of the Interstate Commerce Commission could not certify under their hand and the seal of the Commission, when there was a vacancy in the office of Secretary of said Commission, so as to be used in evidence copies of schedules, tariffs and rules and regulations with reference thereto, in force and effect and on file with the Interstate Commerce Commission.

13. The Court of Appeals erred in refusing to give full force and effect as competent evidence to the tariff and schedules with rules and regulations with reference thereto set out in assignment number 7, when the same had been received in evidence as competent by the trial court.

BRIEF.

I.

The evidence and record of this case in the state courts will be analyzed by this court on Writ of Error to the state court to the extent necessary to give this Plaintiff in Error the benefit of its asserted Federal right.

N. C. Ry. v. *Zackery*, 232 U. S. 248.
Meidrick v. *Lauenstein*, 232 U. S. 236.
Chambers v. *B. & O. Ry.*, 207 U. S. 142.
So. Pac. Ry. v. *Schuyler*, 227 U. S. 601.
Haire v. *Rice*, 204 U. S. 291.
San Jose, L. W. Co. v. *Ranch Co.*, 189 U. S. 177.
Home of Incurables v. *N. Y.*, 187 U. S. 155.

I-A.

The sufficiency of the federal rights set up cannot be evaded if it is necessary to the determination of the case, and of such necessity this court must in each instance decide.

Atl. Cst. Al. v. *Goldsboro*, 232 U. S. 548.
L. R. & N. Ry. v. *Behrman*, 35 U. S. S. C. R. 62, 235 U. S. 164.
N. Y. El. Ry. v. *Subway Co.*, 35 U. S. S. C. R. 72, 235 U. S. 179.
Wood v. *Chesborough*, 228 U. S. 672.
Cresswell v. *K. of P.*, 225 U. S. 246.
Gt. West. Ry. v. *So. Bend*, 227 U. S. 544.
K. C. S. Ry. v. *Albers*, 223 U. S. 573.
St. P. Gas. Co. v. *St. Paul*, 181 U. S. 142.
Douglass v. *Ky.*, 168 U. S. 488.
Huntington v. *Atrill*, 146 U. S. 657.
Chapman v. *Goodenow*, 123 U. S. 540.

I-B.

The Supreme Court of the United States will determine for itself the substance and effect of the decision of the Kansas City Court of Appeals and of the trial court in this case.

L. R. & N. v. *Behrman,* 35 U. S. S. C. R. 65. 235 U. S. 164.

Monogas v. *Alvarez,* 35 U. S. S. C. R. 95, 235 U. S. 81.

C. C. & N. Co. v. *Louisiana,* 233 U. S. 362.

La. v. *New Orleans,* 215 U. S. 170.

Nutt v. *Knutt,* 200 U. S. page 12.

H. & T. C. v. *Tex.,* 177 U. S. 66.

McCullough v. *Va.,* 172 U. S. 102.

I-C.

The Supreme Court of the United States will review the findings of facts of a state court: first, where a federal right has been denied as a result of a finding shown by the record to be without evidence to support; and second, where a conclusion of law as to a federal right and findings of facts are so intermingled as to make it necessary in order to pass upon a federal question to analyze the facts.

N. P. R. R. v. *N. Dak.,* 236 U. S. 585.

N. & W. R. R. v. *W. Va.,* 236 U. S. 605.

Wood v. *Chesborough,* 228 U. S. 672.

So. Pac. R. R. v. *Schuyler,* 227 U. S. 601.

O. R. & N. R. R. v. *Fairchild,* 224 U. S. 510.

Cresswell v. *Grand Lodge K. of P.,* 225 U. S. 246.

K. C. So. Ry. v. *Albers Comm'n Co.,* 223 U. S. 573.

Cedar Rapids Gas Light Co. v. *Cedar Rapids,* 223 U. S. 655.

II.

The pleadings and evidence and instructions of the trial court clearly and conclusively show the theory on which the case was tried below, and the Defendant in Error is estopped by her instruction, number four (4) (page 74 of Record), from claiming that there was no evidence to support that portion of the defendant's answer setting up the schedules, tariffs, rules and regulations as an affirmative defense.

Neosha City Water Co. v. *City of Neosha*, 136 Mo. 498.
Wischmeyer v. *Richardson*, 153 Mo. 559.
Berkson v. *R. R.*, 144 Mo. 219.
Hartman v. *Ry.*, 48 Mo. App. 624.
Siter v. *Bischoff*, 63 Mo. App. 157.
Schaff v. *Fries*, 77 Mo. App. 360.
T. & P. Ry vs Cisco Oil Mills 204 U.S. 449.
C. N. O. & T. Ry vs. Rankin 241 U.S. 319.

III.

Again, not having appealed from the action of the trial court, overruling her objections to the tariffs, rules and regulations, and admitting the same in evidence as competent, defendant in error cannot now be heard to complain thereof.

Westminister College v. *Peirsol*, 161 Mo. 284.
Callaway Co. v. *Henderson*, 119 Mo. 37.
Holdsombeck v. *Fancher*, 112 Ala. 473.
McCloud v. *O'Neall*, 16 Cal. 397.
Addams v. *Long*, 114 Ill. App. 283.
Edgerton v. *Jones*, 10 Minn. 432.
Betz v. *B. & L. Ass'n*, 23 Utah, 604.
Glenn v. *Hill*, 11 Wash. 550.
Pepperall v. *Transit Co.*, 15 Wash. 177.
Tacoma v. *Light Co.*, 16 Wash. 288.

IV.

The schedules containing rates, rules and regulations, certified by the chairman of the Interstate Commerce Commission under the seal of the said commission (pages 34 to 36, 47, 48, 58, 59, 60, 61, 65 to 68 of Record) are competent evidence and were properly admitted by the trial court, it appearing that the secretary of the commission was dead and no new secretary having been appointed by the commission.

Bank v. *Albaugh,* 23 U. S. S. C. R., 450; 188 U. S. 734.
U. S. v. *Perchman,* 7 Pet. 85.
U. S. Wiggins, 14 Pet. 334.
Ry. v. *Winans,* 17 Howard, 41.
Bryan v. *Forsyth,* 19 Howard, 338.
Michan v. *Forsyth,* 24 Howard, 175.
Gregg v. *Forsyth,* 24 Howard, 180.
U. S. v. *Richards,* 4 Dallas, 415.
Amoskeag Bank v. *Ottawa,* 105 U. S. 667.
Stebbins v. *Duncan,* 108 U. S. 32.
Ballew v. *U. S.,* 160 U. S. 187.
George Addams Co. v. *Bank,* 123 Federal, 648; 60 C. C. A. 579.
Dailey v. *Webster,* 56 Fed. 486.

IV A.

Besides the objections as made by the attorney for defendant in error were insufficient to raise the point considered by the Kansas City Court of Appeals of its own motion and was also a waiver of all other objections.

Toplitz v. *Hedden,* 146 U. S. 255.
Keyser v. *Hitz,* 133 U. S. 145.
Evanston v. *Gunn,* 99 U. S. 665.

Belk v. *Meagher,* 104 U. S. 279.
Wood v. *Weymer,* 104 U. S. 795.
Camden v. *Boremes,* 3 Howard, 529.
Burton v. *Driggs,* 20 Wall, 133.
Addams v. *Bank,* 123 Fed. 648; 60 C. C. A. 579.
Burlington Ins. Co. v. *Miller,* 60 Fed. 256; 8 C. C. A. 612.
Hamilton v. *Mining Co.,* 33 Fed. 568.
Fisher v. *Neil,* 6 Fed. 90.
Wyman v. *Chicago,* 254 Ill. 207.
Chicago v. *Golsdorff,* 258 Ill. 212.

IV B.

The schedules containing the tariffs, rules and regulations so certified by the chairman of the Interstate Commerce Commission under the seal of the commission was the best evidence to be had under the circumstances and that is the test.

Ballew v. *U. S.,* 160 U. S. 187.
Bank v. *Albaugh,* 23 U. S. S. C. R. 450; 188 U. S. 734.
Talbot v. *Seaman,* 1 Cranch. 38.
Watkins v. *Holman,* 16 Pet. 53.
Bryan v. *Forsyth,* 19 Howard, 334.
Gregg v. *Forsyth,* 24 Howard, 179.
Addams and Co. v. *Bank,* 123 Fed. 648; 60 C. C. A. 579.
Darby v. *Webster,* 56 Fed. 486.
Burlington Ins. Co. v. *Miller,* 60 Fed. 257; 8 C. C. A. 612.
McCall v. *U. S.,* 1 Dak. 312.
Radcliffe v. *Ins. Co.,* 7 Johnson Report, 50.
Crowell v. *Hopkins,* 45 N. H. 14.
Ford v. *Hopkins,* 1 Salk, 283.
Lewellyn v. *Markworth,* 2 Atk. 40.
Rex v. *Holt,* 5 Term Report, 436.
Ins Co vs Haile 11 Wallace 240
Nicholls vs Webb 8 Wheat 332
U.S. vs Rayburn 6 Peters 367

IV C.

The mode of authenticating public documents of departments of United States is governed by the laws of the United States and the practice of such departments, and not by the statutes or laws of the state.

Jenkins v. *Noel*, U. S. Stewart, 60 (Ala.)
Wyman v. *City of Chicago*, 254 Ill. 207.
American Surety Co. v. *U. S.*, 77 Ill. 109.
Ansley v. *Meikle*, 81 Indiana, 261.
Gilman v. *Ridpelle*, 18 Mich. 145.
Lacy v. *McFarren*, 4 Mich. 150.
Crowell v. *Hopkinton*, 45 N. H. 14.
Hawthorn v. *City of Hoboken*, 35 N. J. Law, 251.
Haddock v. *Kilsey*, 3 Barb. 104.
McLane v. *Bovie*, 35 Wisc. 33.
Witcliffe v. *Hill*, 3 Littel, 330.

IV D.

The courts judicially notice the rules and regulations of the departments of the United States.

Caha v. *U. S.*, 152 U. S. 221.
Leonard v. *Lennox*, 181 Fed. 776; 104 C. C. A. 296.
Smith v. *City*, 103 Fed. 241; 44 C. C. A. 1.
Wilkins v. *U. S.*, 96 Fed. 841, 37 C. C. A. 588.

IV E.

Constructions of the Statutes of the United States given by the various departments of the United States is always persuasive, if not controlling, upon this court.

U. S. v. *Healy*, 160 U. S. 141.
Robertson v. *Downing*, 127 U. S. 613.
U. S. v. *Ry.*, 142 U. S. 621.
U. S. v. *Philbrick*, 120 U. S. 59.
Edwards v. *Darby*, 12 Wheat, 206.

IV F.

The courts will judicially notice persons in charge of record and discharging public duties.

N. Y. M. L. Ry. v. *Winans*, 17 Howard, 41.
Keyser v. *Hitz*, 133 U. S. 138.
U. S. v. *Eaton*, 144 U. S. 677.
Caha v. *U. S.*, 152 U. S. 211.
Wilkins v. *U. S.*, 96 Fed. 837; 37 C. C. A. 588.
Smith v. *Schakopee*, 103 Fed. 240; 44 C. C. A. 1.
Dominici v. *U. S.*, 72 Fed. 46.
Bachus Heater Co. v. *Simond*, 2 App. Cases (D. C.) 290.
Kauffman v. *Stone*, 25 Ark. 336.
Wetherby v. *Dunn*, 32 Cal. 106.
Liddon v. *Hodnett*, 22 Fla. 442.
Louisville v. *Commissioners*, 112 Ky. 409.
Walden v. *Canfield*, 2 Robb, 446 (La.)
Alexander v. *Burnham*, 18 Wisc. 199.
Martin v. *Altman*, 80 Wisc. 150.
State v. *Evans*, 8 Humphrey, 112 (Tenn.).

V.

In passing on federal questions the United States Supreme Court is not limited to the mere consideration of the language of the opinion of the state court.

L. R. & N. Co. v. *Behrman*, 35 U. S. S. C. R. 65; 235 U. S. 164.
Monogas v. *Alvarez*, 35 U. S. S. C. R. 95; 235 U. S. 81.
Carondolet v. *C. & N. Co.*, 233 U. S. 362.
La. v. *New Orleans*, 215 U. S. 170.
Hubert v. *New Orleans*, 215 U. S. 175.
Nutt v. *Knutt*, 200 U. S. 12.
H. & T. C. RR. v. *Tex*, 177 U. S. 62.
McCullough v. *Va.*, 172 U. S. 102.

V A.

And if the state court, to evade the federal question, should pretend to cloud its decision so as to make it appear that a federal question was not involved, the Supreme Court of the United States will nevertheless take jurisdiction.

Leathe v. *Thomas,* 28 U. S. S. C. R. 32; 207 U. S. 93.

V B.

And if there be a federal question in the record adequate to the exercise of its jurisdiction it is the duty of the United States Supreme Court to review the whole case.

Williamson v. *U. S.,* 28 U. S. S. C. R. 165; 207 U. S. 425.

V C.

The United States Supreme Court is not deprived of its jurisdiction because the state court puts its decision on a non jurisdictional ground. In such cases the United States Supreme Court must determine from the record for itself.

L. R. & N. Co. v. *Behrman,* 35 U. S. S. C. R. 65; 235 U. S. 164.

VI.

And we respectfully urge that upon the record of this case the judgment on the merits should have been in the sum of one hundred ($100.00) dollars only and that this judgment should be reversed that a judgment for a hundred dollars only should be entered against the plaintiff in error.

B. & M. RR. v. *Hooker,* 233 U. S. 97.
Pierce Express Co., 236 U. S. 278.
Wells-Fargo Express Co. v. *Neiman Marcus Co.,* 227 U. S. 469.
Addams Express Co. v. *Croninger,* 226 U. S. 491.

ARGUMENT.

We believe that the record set out in our statement and shown by the transcript filed in this court, conclusively establishes the fact that the defendant below, plaintiff in error here, was relying upon the Interstate Commerce law, and upon what was done under and by virtue of and pursuant to such law, as a defense to the action brought against it by the defendant in error, plaintiff below, and as a limitation of the liability to the sum of one hundred ($100.00) dollars; and we believe that the better way to present the argument in this case will be to present it in the order of the developments in the trial court and in the Kansas City Court of Appeals. Having pleaded and invoked the aid of the Interstate Commerce law in the limitations of liability as available to the defendant below, the plaintiff below sought to evade the same by calling to her aid the construction placed upon the Carmack Amendment to the Hepburn Bill by the Supreme Court of the State of Massachusetts in the case of *Hooker* v. *Boston-Maine Railroad,* reported in the 209th Mass., at page 598, in their reply to that defense set up in the defendant's answer. The plaintiff below, defendant in error here, contended that by the proper construction of the Carmack Amendment the limitations of liability set up by the defendant below were null and void; and the reply being the last pleading under the Missouri code, the case went to trial upon the issues made by the petition, answer and reply. In order to sustain its defenses,

the defendant introduced in evidence the schedules shown on pages 33, 34, 35, 36, 46, 47, 48, 58, 59, 60, 61, 65, 66 and 67 of the record. Those schedules, so introduced in evidence, sustained the issues tendered by the defendant, but when the defendant undertook to offer in evidence its Exhibit 3, which is identical with its Exhibit 4, the following colloquy occurred:

> Mr. Marley: I desire to offer in evidence the title page of Exhibit "3" to show the issuing lines and lines over which it operates, and I desire also to show on page three of the tariff that the Atchison, Topeka & Santa Fe is a participating carrier, on page five that the Michigan Central Railroad Company is also a participating carrier. I desire also to call attention to Section four on page eleven showing the rules and regulations with reference to baggage and excess baggage rates, also Sections five and six with reference to the same subject on page twelve.
>
> Mr. Hall: We wish to object to the introduction of that tariff and those parts in evidence for the reason that they are not binding upon the plaintiff in this case unless they were particularly called to her attention and assented to by her at the time she purchased her ticket.
>
> Mr. Marley: At the present time I think it is competent if those are his only objections, I don't think his objections are well taken.
>
> The Court: Ruling reserved.
>
> Mr. Hall: I object for the further reason it's not shown up to date that these tariffs were properly filed under the Interstate Commerce Act in the places where they should be filed.
>
> The Court: Has that been shown?
>
> Mr. Marley: I will show it. I have certified copies from the Interstate Commerce Commission. I expect to make it competent.

Mr. Hall: My position is that you have not complied with the Interstate Commerce Act in the showing that the schedules were filed and posted in compliance with the act and, that if you had shown this, that they would not be binding upon the plaintiff unless they were expressly called to the attention of the plaintiff and expressly assented to by her.

Mr. Marley: When you say "filed and posted," as I understand you, and from the nature of your objections in the depositions, you mean they were not filed and posted in the waiting room of the Grand Terminal Station in New York City in the State of New York.

Mr. Hall: That's one thing, and then I understand up to date you have not taken any testimony to show they were filed before the Interstate Commerce Commission at all.

After having thus stated their position, the defendants below offered in evidence its Exhibit "4" (identical with its Exhibit "3"), and the offer, as made, and the objections, as entered by the plaintiff below, are disclosed by the following colloquy:

Mr. Marley: I desire to offer in evidence New York Central tariff 58 and West Shore tariff number 36, a copy of the one just introduced awhile ago, certified under the hand and seal of the Interstate Commerce Commission. Said document was here marked by stenographer Exhibit "4."

Mr. Hall: I object to the introduction of that for the reason it isn't certified under the Acts of Congress.

Mr. Marley: We have a statute in this state which provides that any certified copy from the department under the seal of the department is all that is necessary. The Secretary of the Interstate Commerce Commission at this time is dead and I have a

letter from the Chairman to that effect and instead of being certified by the secretary I have that letter.

The Court: I have not examined the method of filing these records that are filed in the office of the Interstate Commerce Commission. If you have filed it properly here that will be all and we will look at that in your briefs.

Mr. Marley: How do you say it ought to be certified by the Acts of Congress?

Mr. Hall: My idea of what the Acts of Congress require is that if it's a court proceeding, for instance, it has got to be certified under the hand of the judge of the court and the clerk has got to certify that the judge was the judge of the court and the judge has to certify the clerk was the clerk of the court and unless an instrument is so certified it's not admissible in the state court.

The Court: We will take the statute on it, that's all, and then we can get at it.

Mr. Marley: To save incumbering this record won't you concede this tariff here number 58 that has been offered in evidence as Exhibit "4" was the tariff in effect and governing the carriage of baggage from New York City in the State of New York to Kansas City in the State of Missouri, over the New York Central, Michigan Central and Santa Fe?

Mr. Hall: I don't know whether it was in effect or not, Mr. Marley.

Mr. Marley: I offer in evidence the title page of this Exhibit "4," and also offer in evidence on page number 3 the list of participating carriers showing the Atchison, Topeka and Santa Fe Railway Company as one of such, and page 5 showing participating carriers and the Michigan Central Railroad Company as one of such and of course it is a tariff issued by the New York Central and Hudson River Railroad Company.

The Court: Objections are overruled.

Mr. Hall: Plaintiff excepts to ruling.

The certificate of authentication of the Exhibit "4," shown upon page 36 of the record was as follows:

"INTERSTATE COMMERCE COMMISSION.
WASHINGTON.

I, C. A. Prouty, Chairman of the Interstate Commerce Commission, do hereby certify that the document hereto attached is a true copy of the The New York Central and Hudson River Railroad Company Tariff No. 58, I. C. C. No. 833 (West Shore Railroad Tariff No. 36, I. C. C. No. 436,) filed with the said Interstate Commerce Commission on March 15, 1910, reading as effective April 15, 1910, canceled on May 1, 1911.

And I further certify that said I. C. C. No. 833 was in force and effect, as amended, throughout month of September, 1910.

In witness whereof, I have hereunto set my hand and affixed the seal of said commission this 18th day of January, A. D. 1912.

C. A. Prouty,

(Seal) Chairman of the Interstate Commerce Commission."

And after the introduction in evidence of Exhibit "4" the following colloquy ensued:

Mr. Hall: To all of which I object for the reason that said tariff is not sufficiently certified under Acts of Congress, and for the further reason that it is not shown that that tariff was properly filed before the Interstate Commerce Commission and in the various stations and places where it was required to be filed by the Interstate Commerce Act and for the further reason that it is not binding on the plaintiff in this case unless it is shown that it was expressly called to the attention of the plaintiff at the time she bought her ticket or checked her trunk and expressly consented to by her.

By the Court: Objection overruled.

Mr. Hall: To which ruling of the court plaintiff excepted.

Mr. Marley: I desire to offer the excess baggage scale on page number ten of said Exhibit "4," showing the excess baggage rate in values or the excess baggage rate per hundred pounds where the rate is between $30.60 and $30.90, the excess baggage rate is $5.15 (page 36 of Record).

Mr. Hall: To which I would like to interpose the same objections as the one just stated.

By the Court: Objection overruled.

By Mr. Hall: To which ruling plaintiff excepts.

Mr. Marley: I desire to offer in evidence Section 4 on page 11 of this Interstate Commerce Tariff, Exhibit "4" (page 37 of Record).

By Mr. Hall: To which I wish to interpose the same objection as the one last stated.

By the Court: Objection overruled.

By Mr. Hall: To which ruling plaintiff excepts.

Mr. Marley: I desire to offer in evidence Section 6 on page 12 of Exhibit "4" (page 37 of Record).

Mr. Hall: I wish to interpose the same objection as one last stated.

By the Court: Objection overruled.

Mr. Marley: I desire to offer in evidence Section 9 on page 12 of Exhibit "4," defining baggage (page 38 of Record).

Mr. Hall: The same objection. I would like to interpose a further objection and move this be stricken out for the reason it's not shown and cannot be shown that the portions read by the counsel for the defendant are any part of the rate as filed before the Interstate Commerce Commission.

The Court: I don't know. Has it been or not?

Mr. Marley: Certainly; here it is; it says it's filed. I am reading from the one that is certified by the chairman of the Commerce Commission under the seal of the commission.

Mr. Hall: I claim that that he has read is not any part of the rate, but is a mere incident of the rate and not in any way binding on us.

By the Court: Objection overruled.

Mr. Hall: Plaintiff excepts to the ruling.

Mr. Marley: In connection with the testimony of Mr. Lahm, I desire to again offer this Exhibit "3," and there is no use in setting it out in the record excepting that I am offering it as a part of the deposition of Mr. Lahm from which I am reading, and I presume would be taken subject to the same objections as made to Exhibit "4."

Mr. Hall: Let the record show the same objections are made to Exhibit "3" as were made heretofore to Exhibit "4."

Said Exhibit "3" being joint Passenger Tariff 53, was then introduced in evidence and is identical with Exhibit 4, hereinbefore set out.

Thereupon the defendant then offered in evidence as Exhibit 9 of the deposition the parts of Tariff 53, set out on pages 46, 47, 48 of the record and its offer was met with the following objections and as shown by the following colloquy:

Mr. Marley: I desire to offer the title page of Exhibit "9," also on page two, showing the participating carriers to be Atchison, Topeka & Santa Fe Railway Company and on page 5 showing Michigan Central Railroad as a participating carrier and it's issued by the New York Central & Hudson River Railroad and is naturally effective over it, and on page 66 showing the rate to

Kansas City with a three days' limit first class to be $30.75 and the excess baggage rate $5.15, and also sections 3 and 4 of the rules and regulations contained on page 10 of the same schedule, which is to the same effect as the other.

Mr. Hall: To all of which we object for the same reasons pointed out to Exhibits "3" and "4."

By the Court: Objection overruled.

Mr. Hall: Plaintiff excepts to ruling.

Mr. Marley: I desire to offer in evidence the Supplement No. 6, being Exhibit 6 attached to the deposition.

Said document was here marked by the stenographer Exhibit "10."

Mr. Hall: We interpose the same objections as to Exhibits "3" and "4."

Mr. Marley: I offer that to show there has been no change governing the ticket and checking of baggage as set forth in passenger tariff 53. I think counsel might concede there is nothing in supplement No. 6 that in any manner affects or modifies tariff No. 53, that is Exhibit "9" in evidence.

Mr. Hall: All right.

And the defendant also offered in evidence part of the joint tariff as shown on pages 58, 59, 60 and 61 of the record certified in the following manner, to-wit:

"INTERSTATE COMMERCE COMMISSION
WASHINGTON.

I, C. A. Prouty, chairman of the Interstate Commerce Commission, do hereby certify that the document hereto attached is a true copy of Joint Passenger Tariff No. 53, C. L. Hunter, Agent, I. C. C. No. A-15, filed on November 1, 1909, read-

ing as effective December 1, 1909, canceled by I. C. No. A-33 on August 1, 1911.

And I further certify that said I. C. C. No. A-15 was in force and effect, as amended, throughout month of September, 1910.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said commission this 18th day of January, A. D. 1912.

C. A. Prouty,
Chairman of the Interstate Commerce Commission.
(Seal)

To the offer thus made the plaintiff made the following objection:

Mr. Hall: To which I wish to interpose the same objection as to Exhibits "3" and "4."

The Court: The objections are overruled.

Mr. Hall: Plaintiff excepts to the ruling.

And then, again, defendant offered in evidence portions of its Exhibit "3" (which is identical with defendant's Exhibit "4"), the evidence being shown on pages 64, 65, 66 of the record. And the objection and exception thereto is shown by the following colloquy, to-wit:

Mr. Marley: I offer the title page of said defendant's Exhibit 2, and then the participating carrier on page 3 thereof, showing the Atchison, Topeka & Santa Fe Railway Company as one, participating carriers on page 5, showing Michigan Central Railroad Company as one, and issued by the New York Central & Hudson River Railroad Company, the issuing carrier, and I also offer in evidence Sections 4, 5, 6 and 7 of said defendant's Exhibit 3, the same sections as we

offered heretofore and I now offer them as certified copies.

Mr. Hall: To all of which we object for the same reasons pointed out in objections to 3 and 4.

The Court: Objections overruled.

Mr. Hall: Plaintiff excepts to the ruling.

The said Exhibit "3" was again admitted in evidence by the court and was authenticated in the following manner, to-wit (see page 67 of Record).

"INTERSTATE COMMERCE COMMISSION
WASHINGTON.

I, Judson C. Clements, chairman of the Interstate Commerce Commission, do hereby certify that the papers hereto attached contain true and correct copies of Sections 4, 5, 6, 7, pages 11 and 12, of the New York Central and Hudson River Railroad Company N. Y. C. Tariff No. 58—First Issue, I. C. C. No. 833 West Shore R. R. W. S. Tariff 36, first issue I. C. C. No. 436, filed with the said Interstate Commerce Commission on March 15th, 1910, and as amended in force from effective date, April 15th, 1910, until canceled May 1st, 1911.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said commission this 2nd day of June, A. D. 1911.

(Seal) Judson C. Clements,
Chairman of the Interstate Commerce Commission.

And finally after the evidence was all in and the declarations of law were being submitted, the court, in order to make its position clear as to the competency of the testimony, at the close of the evidence made the following order:

"Wherever I have postponed the ruling on plaintiff's objections to evidence, such objections are overruled and excepted to by the plaintiff."

We will now take up seriatum the objections lodged by the defendant in error against the admissibility of the evidence referred to, and the effect of the trial court's overruling the objections, and the effect of the declarations of law asked by the defendant in error, and granted to her by the trial court, upon the record showing the admission of such evidence as competent by the court; and the question of the right of the plaintiff below, defendant in error here, to urge in the court of review, without themselves coming up on a cross appeal or writ of error from the trial court, the reviewing and disregarding of such admitted evidence, as incompetent by the reviewing court when the same has been admitted as competent by the trial judge, and has been assumed to be competent and properly in the record by the declarations of law asked by the defendant in error.

I.

We first contend that the objections urged against these tariffs as certified by the Chairman of the Interstate Commerce Commission were too general and not sufficiently specific, to have justified the trial court in excluding the same as improperly authenticated.

This court will notice that the first objection lodged by the attorney for the plaintiff was in harmony with the issues tendered by his reply, for it is in the following language:

"We wish to object to the introduction of that tariff and those parts in evidence for the reason that they are not binding upon the plaintiff in this case unless they were particularly called to her attention and assented to by her at the time she purchased the ticket."

To this the defendant's attorney responded:

"At the present time, I think it is competent if those are his only objections. I don't think his objections are well taken."

Then follows the further objections shown above. Our contention is that the above coloquies show that the plaintiff was relying upon the following propositions:

First. That in order to be bound by the evidence the defendant had to show that her attention should be called particularly to this tariff and their regulations and her assent thereto obtained at the time she purchased the ticket;

Second. That the tariffs were not filed and posted in the waiting room of the Grand Terminal Station, and

Third. That no testimony had been taken to show they were filed before the Interstate Commerce Commission.

It will also clearly appear that in response to the objection of plaintiff's attorney the defendant's attorney asked him:

"How do you say that it ought to be certified by the Acts of Congress?"

To that the plaintiff's attorney replied:

> "My idea of what the Acts of Congress require is that if it is a court proceeding, for instance, it has to be certified under the hand of the judge of the court and the clerk has got to certify that the judge was the judge of the court, and the judge has to certify that the clerk was the clerk of the court *and unless an instrument is so certified* it is not admissible in the state court."

Our contention is that such objections are too general to exclude the evidence admitted by the court even if it was conceded (which it was not) that the authentication was insufficient. We believe we are sustained by the authorities shown under point IV "A" of the brief of plaintiff in error. In the case of *Burton* v. *Driggs*, 20 Wall, 133, this court, speaking to the question of the sufficiency of an objection, says:

> The exception is as follows: "The defendant objected to the copy on the ground that it was not the original. The court overruled the exception and admitted the deposition to which decision the defendant excepted."
>
> It is a rule of law that where a party excepts to the admission of testimony he is bound to state his objections specifically and in a proceeding for error he is confined to the objection so taken. If he assign no ground of exception than mere objection, none avail him. In *Hinds, lessee,* v. *Longworth,* this court said, "As a general rule, we think the party *ought to be confined* in examining the admissibility of evidence *to the specific objection taken to* it." The attention of the court is called to the testimony in that point of view only. Here the objection was that the copy was

not the original. This, as a fact was self-evident, but as a ground of objection, it was wholly indifferent.

And again in the case of *Camden* v. *Doremus*, 3 Howard, 530, this court in discussing a similar question, says:

Before entering upon an examination of this agreement and of the questions which it has given rise to, it is proper to dispose of an objection by the defendant in the court below which seems to have been aimed at the entire testimony adduced by the plaintiffs, but whether at its competency, or relevancy, or its regularity merely, that they object, is now nowhere disclosed. After each deposition offered in evidence by the plaintiffs to the jury it is stated that to the reading of such depositions the defendant, by his counsel, objected and that his objection was overruled. A similar statement is made with regard to the record of the suit instituted in the court of Hinds County against Calhoun, the maker of the note, and offered in this cause as proof of due diligence with regard to the manner and the import of this objection, we would remark that they were of a kind that should not have been tolerated in the court below, pending the trial of the issues before the jury. Upon the offer of testimony, oral or written, extended and complicated as it may often prove, it could not have been expected upon the mere suggestion of an exception which did not obviously involve the competency of the evidence nor point to some definite or specific defect in

its character; that the court should explore the entire mass for the ascertainment of defects which the objector, himself, either did not or could not point to their view. It would be more extraordinary still if, under the mask of such an objection or mere hint at objection, a party should be permitted in an appellate court to spring upon his adversary defects which it did not appear he ever relied on; and which if they had been expressed and specifically alleged, might have been easily cured.

And on a similar point this court in the case of *Wood* v. *Weymer*, 104 U. S. 795, says:

> In this connection it is proper to consider the exception which was taken to the introduction in evidence of the deed from the Steward to Terwilliger. The language of the exception as recorded in the bill of exceptions is as follows: "To the reading in evidence of which deed, plaintiff, by his counsel, objected, for that it was incompetent, immaterial and irrelevant." It is now insisted "that the attestation of the recorder of deeds of the correctness of the transcript was not certified to be in due form and by the proper officer as required by the acts of Congress of March 27, 1804, prescribing the mode in which the public records in each state shall be authenticated so as to take effect in every other state." This was not the objection made below and it comes too late here. There the attention of the court was called only to the competency, materiality and relevancy of the deed; here was the form of the authentication of the copy. The rule is universal that nothing which occurred in the progress of the trial can be assigned for error here unless it was brought to the attention of the court below, and passed upon

directly, or indirectly. It is clear that the ruling complained of in this case was in respect to the effect to be given the deed when proved and not to the form of making the proof.

And in the case of *Toplitz* v. *Heddon,* 156 U. S. 255, in speaking to the same point, this court says:

> The witness answered that his firm wrote such a letter. He was then shown what was purported to be a copy of that letter and asked if it was a copy. This was objected to on the ground that the original was not produced, but the objection was overruled and the plaintiffs duly excepted. The defendant then offered the copy in evidence and the plaintiffs objected; but the court overruled the objection and the plaintiff duly excepted. The copy was then read in evidence and was set forth in record. The plaintiffs contend that the copy was read in evidence without any proof that it was a copy. What was before said as to the first assignment of error is applicable here also. The objection that there was no proof that the copy was a copy is not taken in the bill of exceptions. The copy was treated by both sides as a copy and the bill of exceptions merely states that when the defendant offered the copy in evidence, the plaintiff objected, but no ground of objection was set forth. The exception therefor is unavailing." (Citing authorities.)

And in the case of *Burlington Insurance Company* v. *Miller,* 60 Fed. 256, the United States Circuit Court of Appeals for the Eighth Circuit, says:

> Throughout the record it appears that the evidence was objected to in the most general language because it was "incompetent," "irrelevant" and "immaterial." It is not shown that in a single instance the attention of the trial court was directed

to the fact that the plaintiff had failed to plead, waiver, or estoppel and it was asked to exclude the objectionable testimony for that reason. If the evidence had been challenged on that ground, for aught that we can now tell, the testimony might have been excluded or the plaintiff's attorneys might have asked and obtained leave to amend the pleadings so as to forestall every possible objection to the testimony on that ground. Instead of pursuing that course, the defendant's attorney thought proper to employ language well calculated to conceal the real ground of his objection to the evidence as to disclose it. Appellate courts have on many occasions condemned the practice of stating objections to testimony in language that is so general or obscure that it may not have served to have advised the trial court or the opposite party of the precise nature of the objection intended to be urged and to be relied upon. Specfiication of the particular reason upon which the party asks the trial court to exclude or to admit certain testimony is essential, for three reasons: *first*, to prevent a violation of the fundamental rule that a litigant must abide in an appellate court upon the theory which he has advocated at *nisi prius; second*, to prevent an appellate tribunal from becoming something quite different from a Court of Review: and *lastly*, that the opposing party and the trial court may be fairly advised as to the force and nature of the objections intended to be urged and for a fair opportunity to consider it and if need be, to obviate it. (Citing numerous authorities.)

And in the case of *Hamilton* v. *Mining Company*, 33 Fed. 568, one of the United States Circuit Courts has said:

> When particular grounds of objections are specified, such specification is exclusive and all grounds not specified are waived. *Evanston* v.

Gunn, 99 U. S. 665; *Belk* v. *Meagher,* 104 U. S. 279. If a general objection to evidence is made but no ground of objection is specified, the objection will not be considered. If a ground of objection is stated, *all grounds not specified are considered waived. Fisher* v. *Neil,* 6 Fed. 90; *Wood* v. *Weyman,* 104 U. S. 795; *Camden* v. *Boremus,* 3 Howard 529; *Burton* v. *Driggs,* 20 Wall. 133.

We think that from the authorities referred to and from what was said above, it clearly appears that the objections as lodged by the plaintiff below to the evidence offered and *admitted by the trial court* would not have justified the trial court in excluding such evidence, and did not justify the Appellate Court, when reviewing the acts of the trial court, in assuming that the trial court in a moment of repentance of its action in admitting such evidence, in the fractional part of a second and without making anything of record to show a reversal of ruling, disregarded such evidence in entering judgment.

II.

We also contend, that the plaintiff below, having failed to come up, by appeal or Writ of Error to have reviewed the action of the trial judge in admitting such evidence, was not and is not in a position to urge, in the reviewing court error of the trial court in admitting such evidence as competent.

We think the authorities we have under point three of our brief clearly supports this contention.

In *Callaway Co.* v. *Henderson* (119 Mo. p. 37), the plaintiff, respondent, undertook to take advantage of

what was in the record before the court upon the appeal of the defendant, Henderson, but the Supreme Court would not permit it, saying:

> "The prosecuting attorney insists here that the orders made by the County Court approving the various quarterly statements were not judgments; and that the Circuit Court should have reviewed the accounts for the eight years, and determined what, if any, amount the clerk collected in each year, in excess of that allowed by law.
>
> "It is to be observed in the first place that these statements rendered prior to that year 1890, are not found in the record before us. All we have is the statement that they were offered in evidence. *But a full and complete answer to all of these claims* of the prosecuting attorney is, that the county did not appeal from any of the rulings of the Circuit Court. *It is true the prosecuting attorney during the trial saved exceptions to the ruling of the court, in excluding the statements* for the seven years prior to 1890, but he filed no motion for a new trial and took no appeal. The county has nothing in this record upon which to base any complaint."

In the case of *Westminster College* v. *Peirsol* (161 Mo. p. 284), in an action of forclosure, *which is an action in equity*, and where the powers of the Appellate Court are much greater in reviewing the action of the lower court in chancery than in reviewing the *pure questions of law* that come up in actions at law, the respondent undertook to take advantage of an error of the court in admitting in evidence a void deed, *in an effort to uphold a decree*, and the Supreme Court there disposed of the proposition in the following manner:

"When, however, plaintiff offered in evidence the deed of trust, defendant objected for the reason that it is *void on its face and conveys nothing;* and for the further reason that it appears therefrom that the note intended to be *secured is not the note offered in evidence by the plaintiff;* and for the further reason that the indorsement on said deed of trust is not the best evidence as to the recording of said deed in the office of the recorder of deeds of Morgan County; and for the still further reason that said conveyance was executed by the grantor therein *after he had parted with his title* to said lands, and delivered the possession of the same to the defendant, Fry. While these objections were overruled and the deed of trust read in evidence, *the judgment was in favor of defendant,* and as he has not appealed therefrom, he is in no position to insist upon an erroneous ruling from which he does not appeal."

Bearing in mind that the plaintiff there was the appellant, and the defendant there was respondent, we will paraphrase the proposition and apply it to this case:

When, however, appellant offered in evidence the tariffs, rules and regulations shown in the record, and respondent objected, for the reason that the same were not certified in accordance with the law, and were therefore void on their face and proved nothing * * *. While those objections were overruled, and the schedules, rules and regulations were read in evidence, the judgment was in favor of respondent and she has not appealed therefrom, she is in no position to insist upon an erroneous ruling from which she does not appeal.

III.

Again we urge that the plaintiff below, by asking and obtaining from the court her declaration number four (4) shown on page 74 of the record, reading as follows:

> "The court declares the law to be that even if the local and interstate tariffs of excess baggage rates *introduced in evidence, were filed* with the Interstate Commerce Commission of the United States and properly posted as required by Interstate Commerce Act, still plaintiff would be entitled to recover the reasonable value of her trunk, and the reasonable value of the articles of baggage contained therein, unless she expressly assented to the provisions of said tariffs limiting the liability of the defendant to $100.00 for loss of baggage, unless a greater value should be declared and paid for."

is estopped from complaining in the reviewing court of the action of the trial court in admitting such evidence.

And we respectfully urge that the authorities cited under point two of our brief clearly sustains our contention. In the case of *Neosha Water Co.* v. *City of Neosha*, 136 Mo. 508, loc. cit., the Supreme Court of Missouri, speaking to the point, says:

> It is well established law that a party cannot complain of an instruction given at his request, however erroneous it may be (*Flowers* v. *Helms*, 29 Mo. 324; *Gates* v. *R. R.*, 44 M. A. 488), and we see no reason why the same rule should not apply to the sufficiency of the evidence upon which to predicate an instruction when challenged by the party upon that ground at whose instance it was given.

And as said by the Supreme Court of Missouri in the case of *Wischmeyer* v. *Richardson,* 153 Mo. loc. cit. 558:

> It has been repeatedly held that under the present practice act, when the Circuit Court tries a case like this, sitting as a jury, the Supreme Court will not weigh the evidence, and determine whether or not the finding of the trial court was correct on the evidence. This it will only do in an action in equity, or on an agreed statement of facts. The only way in an action like this, where there are no exceptions to evidence saved at the trial, to have a review of the decision of the lower court, is to ask declarations of law applicable to the facts of the case. The giving or refusal of instructions is *the only way this court* can ascertain the theory on which the trial court tried and determined the matter at issue. (Citing numerous authorities.)

We respectfully urge that the defendant in error, in not having appealed from the action of the trial court in admitting the evidence above referred to and in having asked and obtained instruction No. 4, based upon such evidence being in the record, is in no position to ask a reviewing court to pass upon the competency of such testimony, and in no position to have the action of the lower court in admitting such evidence, revised and an opposite ruling excluding the same from the record made by the reviewing court.

IV.

We respectfully urge that the evidence objected to as incompetent by the plaintiff's attorney and admitted as competent by the trial court and disregarded as incompetent by the Kansas City Court of Appeals, was competent as certified and authenticated by the Chairman of the Interstate Commerce Commission.

It is not necessary to cite any authorities or to call the court's attention to the Acts of Congress, to sustain the assertion that the Interstate Commerce Commission is a corporate body of which the chairman of the Commission is the head and that the secretary is appointed by and is the creature of such commission. Neither is there any necessity for our expatiating upon the innumerable duties and details of the Commission. On its many ramifications and departments; upon the tremendous volume of business dispatched by it every year; nor upon the innumerable tariffs, schedules, rules and regulations filed with the Commission every year; but will merely call the court's attention, in a general way, to the Commission and the members thereof, to the tremendous amount of work performed by it, to the fact that the secretary is but its employee and creature. But, we do ask this court to note what an anomalous position the Commission would be in, and what terrible plight the railroads of this country would be in if no one but the Secretary of the Commission could authenticate papers on file with the Commission. Certain it is that the Chairman of the Commission is the highest member of the

Commission and the Secretary of the Commission is but its creature and employee. With the tremendous amount of litigation in all the courts of the Union, requiring in evidence copies of tariffs, schedules, rules and regulations on file with the Commission, in what helpless position the Commission itself, as well as the roads, would be put, by the death of the Secretary, if the Chairman of the Commission could not authenticate the copies of papers on file with the Commission. Take this case, for instance. If the Kansas City Court of Appeals is correct, it would require one of three things in order to get evidence into the record made by the trial court. The *first*: To subpoena by *duces tecum* some member or employee of the Commission to attend the trial and bring with him the required tariffs, schedules, rules and regulations, filed with the Commission; or *second*, to issue a notice to take deposition in the offices of the Commission in Washington, D. C., and there take the testimony of a member or an employee of the Commission and by his sworn testimony, get a copy of the required tariffs, schedules, rules and regulations, to be put in evidence, proven by the testimony of such person; or, *third*, the railroad company, or any litigant, who desired the same, to send an employee to Washington, D. C., to the offices of the Commission, to find the desired tariffs, schedules, rules and regulations, on file with the Commission, make a copy thereof and attend the trial court and in open court on examination swear to the correctness of the copy. It can readily be seen what a confusion would be created, and how much the business of the Commission

could be interfered with if its employees could be subpoenaed to attend the trials in the various courts bringing with them the tariffs, rules, schedules, and regulations on file with the Commission desired to be used in evidence; how many employees of the Commission it would require to be in constant attendance upon such trials; or if you can picture all the railroads of the country, or other litigants desiring the same, taking the time of the employees of the Commission and the office space of the Commission at Washington to take depositions of the employees, or members, of the Commission at its offices in Washington, to prove a copy of schedules, tariffs, rules, or regulations, to be used in the trial courts of the country; or imagine various employees of the railroad companies going to Washington and to the offices of the Commission and going through the files of the Commission to ascertain for the purpose of testifying thereto, whether or not the tariff, rules, schedules and regulations, desired by them, were on file with the Commission and then and there in the offices of the Commission, taking sufficient time and space to sit down and copy the tariffs, schedules, rules and regulations on file, desired to be sworn to by them in open court as a correct copy. It seems to us that with the imagination filling out the details of the above suggested methods, this court will realize that either of the three propositions would be absurd and would make the Commission so cumbersome and so heavy that it would fall apart of its own weight.

And again, conceive, if you can, the Interstate Commerce Commission, the large active and responsible body it is, with so many employees and discharging so many varied and responsible duties, being rendered helpless and supine from its chairman down, because its secretary, one of its own creatures, has died and the Commission has not appointed a successor. And again on that point, would it be fair to the railroad companies to put upon them the responsibility for the failure of the Commission to appoint a succeeding secretary? Yet, Judge Ellison of the Kansas City Court of Appeals, virtually says, it devolved upon the defendant below in this case to show why the Commission had not elected a secretary to succeed its former secretary, who died. Rather isn't it more reasonable and fair to all parties to hold as a matter of *common law* that the Chairman of the Commission on account of his official position and without reference to the vacancy caused by the death of its secretary had full power to authenticate any tariffs, schedules, rules and regulations, on file with the Commission under the seal of the Commission, and that the same so authenticated should be admitted in evidence *as competent?* In fact, we urge that the learned appellate judge who wrote the opinion of the Kansas City Court of Appeals was clearly wrong in holding that the Secretary of the Interstate Commerce Commission was the only person who could authenticate tariffs, rules, schedules, and regulations, or other public documents on file with the Commission and in the event of his death no person had power or authority so to do. In fact, the

Commission would cease being able to discharge one of its essential functions, its secretary having died, although its chairman and all its members were alive and attending the Commission in carrying on the functions of the Commission at its headquarters in Washington, D. C. The construction of the Acts given by Judge Ellison leads to nothing but absurdities which should be avoided if possible, and it is possible.

V.

We respectfully urge that the Chairman of the Commission, upon the death of the Secretary of the Commission was the proper party to authenticate the schedules, rules and regulations admitted in evidence in this case by the trial court; and we believe that our position is sustained by the authorities shown under point IV of the brief.

In the case of *U. S.* v. *Perchman*, 7 Pet. 85, this court, speaking to the question whether or not the statute authorizes admission in evidence of a copy authenticated by a public officer in charge, held:

> Whether these acts be or be not construed to authorize the admission of the copies offered in this cause we think that *on general principles of law* a copy given by a public officer whose duty it is to keep the original, ought to be received in evidence.

And again in the case of *Bryan* v. *Forsyth*, 19 Howard, 338, this court, in discussing whether state papers published by order of Congress and authenticated

and edited by the Secretary of the Senate and Clerk of the House were admissible in evidence, held:

> These state papers were published by order of Congress and selected and edited by the Secretary of the Senate and Clerk of the House. They contain copies of legislative and executive documents and are as valid evidence as the originals are from which they were copied; and it can not be denied that a record of the report of Edward Coles as found in the printed journal of Congress could be read on mere inspection as evidence that it was the report sent in by the Secretary of the Treasury. The competency of these documents as evidence in the investigation to claims to lands in the courts of justice has not been controverted for twenty years and is not open to controversy.

And in the case of *Gregg* v. *Forsyth*, 24 Howard, 180, this court, in speaking to the admissibility of volumes of American state papers published by a private party under the revision of the Secretary of the Senate, held they were admissible without being authenticated and this court said:

> The volumes of American state papers, three of which were published by Duff Green under the revision of the Secretary of the Senate by order of the Senate, contained authentic papers which are admissible as testimony without further proof.

And again in the case, *U. S.* v. *Wiggins*, 14 Pet. 346, this court, speaking to the competency and admissibility of evidence, of a certified copy of the decree authenticated by a secretary without statutory authority, said:

The evidence given to the grantee was a certified copy of the decree or of the memorial and decree by the government secretary; and that it was one of the ordinary duties of the secretary to make certified copies of memorials and decrees for the use of the parties. Generally the decree of the governor directed the copy to be made for the use of the party and that copies made by the government secretary and certified by him were generally received as evidence of title in the Spanish courts of justice. The copies were made immediately after making the decree and delivered to the party when he called for them. No seal was affixed to the secretary's certificate which was evidence of the facts to which it certified, in a case like this. From the evidences of the duties incumbent on the government secretary of Florida derived from this record, and other sources, we have no doubt the duties were such as proved; that the secretary was the proper officer appointed by law to give copies and that the law trusted him for this particular purpose so far as he acted under its authority. It follows in this case as in all others where the originals are confined to a public office and copies are introduced that the copy is first competent evidence by authority of the certificate of the proper officer. And second, that it proves *prima facie* the original to have been on a file in the office when the copy was made. And for this plain reason the officer's certificate has accorded to it sanctity of a deposition.

And again in the case of *Wilkins* v. *Holman*, 16 Pet. 55, this court, speaking to the same proposition as that discussed in *Bryan* v. *Forsyth*, 19 Howard, 338, says:

> The volume of state papers offered in evidence by the defendants, we think should have

> been admitted. This volume was published under an Act of Congress and contains the authentication required by the act. Its contents are therefore evidence. * * * In this country, in all public matters, the journals of Congress and of the state legislatures are evidence, and also the reports which have been sanctioned and published by authority. This publication does not make that evidence which intrinsically is not so, but it gives in a most authentic form certain papers and documents. In the case under consideration the volume of documents was offered to show the report of certain commissioners under an Act of Congress confirming the title in question. Now this original report duly authenticated by the treasury department to which it was made would be evidence and it is evidence in the published volume. The very highest authenticity attaches to these state papers published under the sanction of Congress.

And again, in the case of *U. S.* v. *Richards*, 4 Dallas, 415, this court, speaking as to the copy memorandum certified under the hand and seal of the custom house officers, speaking to the point, held as follows:

> A copy of the manifest of the outward cargo of the 'EXPERIMENT' certified under the hands and seal of the custom house officers of Baltimore was offered in evidence after proof by the witness that he had himself compared it with the record. The prisoner's counsel objected that there was no evidence that the original manifest was subscribed by the prisoner or even delivered by him. The district attorney answered that by the twenty-first section of the impost law, it was made the duty of the collector of the port to record in all books to be kept for that purpose all manifests and that being a record the proof offered was unexceptionable. (by the court). In that point of view the evidence is clearly admissible.

And in the case of *Post* v. *Supervisors*, and *Amoskeag Bank* v. *Ottawa*, 105 U. S. 670, this court, speaking again to the principles involved, held:

> By virtue of the statute of Illinois of February 12, 1849, the copies of the original daily journals kept by the clerks of the two houses, made by persons contracted with or employed for the purpose as authorized and directed by that act (though not sworn public officers) in well-bound books furnished by the secretary of state pursuant to the duty thereby imposed upon him and afterwards deposited and kept in his office are official records in his custody, copies of which certified by him are admissible upon settled rules of evidence, as well as by the decision of the Supreme Court of Illinois, in *Miller* v. *Goodwin*, above cited. And neither the competency nor the effect of such copies is impaired by the loss or destruction of the daily journals or minutes.

And in the case of *Crowell* v. *Hopkinton*, 45 N. H. 14, the Supreme Court of New Hampshire, in discussing the proposition, held:

> Objection is made to the sufficiency of the authentification of the president's letter to the governor and of the letter as evidence of the president's call for 300,000 men. The laws of the United States provide for the mode of authenticating copies of the records and papers in the public offices of the national government. By Act of Congress of September 15, 1789, the Department of Foreign Affairs, since called the Department of State, was established, and by Section 7 of the last Act, the secretary was authorized to cause a seal of the office to be made, etc.; and all copies of records and papers in the said office authenticated under the said seal, are made evi-

dence equally as the original record or paper. And by the Act of February 22, 1849, entitled, 'An Act for Authenticating Certain Records," it is provided that all books, papers, documents and records in the War, Navy, Treasury and Post Office Departments, and the Attorney-General's office shall be copied and certified under seal in the same manner as those in the State Department, may now by law be and with the same force and effect. Under these statutes no doubt can be reasonably entertained that the papers produced are copies duly authenticated of papers on file, or record in the Department of War, and equally evidence as the original record or paper. It is obvious that the instruments thus laid before us are very informal. Instead of the usual form of Acts of State authenticated by the national seal and the attestation of the secretary of state, they are in the form of letters to the governors of the states, giving them notice of what the President has decided to do. They do not purport to be the decrees, orders, or proclamations by which the thing is done. But we have no constitutional or statutory provision directing in what manner the decrees or orders of the President shall be authenticated or published. He is controlled in this respect only by his own sense of propriety and the *rights of the citizens must not be impaired by any departure from customary forms.*

And in the case of *Meehan* v. *Forsyth*, 24 Howard, 175, this court, in discussing the admissibility of a certified copy under the principles of the common law, held:

> The plaintiff produced from the surveyor general's office a certified copy of the survey according to which the location of the claim was made. This testimony was objected to but was

received by the court, and we think properly, an original of the plan of survey is retained in the office of the surveyor general and a copy given by that officer who is required to keep it *upon general principles, is admissible in evidence. U. S.* v. *W. Perchman*, 7 Pet. 51.

We think that from the foregoing it should be fairly and properly held that the tariffs, schedules, rules and regulations, certified by the Chairman of the Interstate Commerce Commission and under his hand and the seal of the commission and offered in evidence as disclosed by the record in this cause, were clearly competent upon common law principles and we also think finally and in support of that proposition the case of *Evanston* v. *Gunn*, 99 U. S. 665, sustains our position. There this court says:

> The admission in evidence of a record kept by a person employed by the United States Signal Service at Chicago, was objected to at the trial, not because it had not been properly made, identified and proved, but for the alleged reason that there 'was no law authorizing such records to be used in evidence and because it was not competent testimony.' The defendants, having thus specified their objection, it must be considered that all others were waived or that there was no ground upon which others could stand. (Citing authorities.) We have then only to consider the objections that were made, the only ones that appear in the bill of exception, and they present the question whether the record, conceding it to be properly proved, was competent evidence. It may be admitted that *there is no statute expressly authorizing the admission of such* a record as proof of the facts stated in it, *but many records are*

properly admitted without the aid of any statute. The inquiry to be made is, what is the character of the instrument? The record admitted in this case was not a private entry on memorandum. It had been kept by a person whose public duty it was to record truly the facts stated in it. Sections 221-222 of the Revised Statutes require meterological observations to be taken at the military stations in the interior of the continent and at other points in the states and territories for giving notice of the approach and force of storms. The Secretary of War is also required to provide in the system of observations and reports in charge of the chief signal officer of the army for such stations, reports, and signals as may be found necessary for the benefits of agricultural and commercial interests. Under these acts a system has been established and records are kept at the stations designated, of which Chicago is one. Extreme accuracy in all such observations and in recording them is demanded by the rules of the signal service, and it is indispensable, in order that they may answer the purposes for which they are required. They are, as we have seen, of *a public character kept for public purposes and so immediately before the eyes of the community that inaccuracies, if they should exist,* could hardly escape exposure. They come therefore within the rule which admits in evidence, official registers, or records kept by persons in public office, in which they are required, either by statute, or by the nature of their office, to write down particular transactions occurring in the course of their public duties or under their personal observations (citing authorities). To entitle them to admission it is not necessary that a statute requires them to be kept. It is sufficient that they are kept the discharge of a public duty (citing authorities). Nor need they be kept by public officer himself if the entries are made under his direction by a person

authorized by him. *Galt* v. *Galloway*, 4 Pet. 332. It is hardly necessary to refer to judicial decision illustrating the rule. They are numerous. A few may be mentioned (citing them). We think therefore that there was no error in admitting the record kept by the person employed for the purpose by the United States Signal Service.

And then again this case applies with equal force to the proposition supported by the authorities mentioned in IV "A" of the brief.

We respectfully urge that the case of *Daley* v. *Webster*, 56 Fed. 486, decided by the United States Circuit Court of Appeals for the Second Circuit sustains our contention that the evidence under discussion was properly admitted by the trial court and improperly disregarded by the Kansas City Court of Appeals. In the case of *Daley* v. *Webster*, the United States Circuit Court of Appeals says:

> It was the duty of the clerk who kept the day-book (apparently a duty imposed upon him, not by any express statute or order of the court, but by the directions of his superior officers and the rules and practice of the office) on receipt of a work deposited under the copyright law, to make an entry in the last column of the book of the receipt of the deposit. An entry appeared in this book in his handwriting showing the deposit "under the gas light" on August 1, 1867, which was within the three months. This record kept by a person in the *discharge of a public duty was competent evidence of the transaction* which was therein stated to have occurred. *Evanston* v. *Gunn*, 99 U. S. 660; 1 Greenl. Ev., 483, and in the absence of any proof to the contrary it was sufficient evidence of the deposit of "under the gaslight" as alleged.

And the case of *Radcliffe* v. *Unity Ins. Co.*, 7 Johns. page 50, is applicable with equal force and there the court says:

> The letter of Mr. Canning to Mr. Pickney of the 8th of January, 1808, would have still further corroborated the proof of the blockade as it *was decisive evidence of the intention of the English government* to include St. Lucar in the blockade of Cadiz and to carry the blockade at the entrance of those ports into the most rigorous effect. This letter, I think, ought to have been admitted in evidence. It appears to have been printed at the City of Washington by persons whom the defendant offered to show were printers to congress and to have composed a part of a set of public documents transmitted to congress by the President of the United States. *A greater strictness of proof in respect to such public matters of state and when they are introduced collaterally and not as a matter of fact in issue would be inconvenient and it is not now in practice required.*

VI.

And again we respectfully urge that the tariffs, rules, schedules, and regulations, certified under the hand of the Chairman of the Commission and under the seal of the Commission, were admissible in evidence because at the time they were the best evidence obtainable.

In support of our brief in that regard we call the court's attention to the case of *Addams and Co.* v. *National Bank*, 123 Fed. 648, where the United States Circuit Court of Appeals for the Eighth Circuit holds:

It is argued in this court that the waybills were not admissible because no foundation was laid for their introduction by showing why the originals were not produced, and because they related to transactions between Manning and the railroad company, and were *"res inter alios acta,"* but no specific objections of this sort was made to the waybills in the trial court. The objection, as will be observed, was of the most general character and may have been construed by the trial judge as based principally, if not entirely, upon a supposed defect in the petition. Objections to testimony as we have heretofore said (*Burlington Ins. Co.* v. *Miller,* 8 C. C. A. 612; 60 Fed. 254), ought always to be made specific when one intends to rely upon the objection on an appeal, so far as to challenge the attention of the trial court to the very point on which the objecting party intends to rely. * * * Furthermore, defendant, by its conduct in producing the waybills and offering them in evidence as exhibits to Acton's deposition in effect, admitted their reliability and gave the opposite party just ground to believe that they would and might be used at the trial as competent testimony. *Moreover no one can doubt that these waybills, kept as they had been, were such persuasive evidence of the facts recorded that no one in the ordinary transaction of life would hesitate to act on the information which they contained.* For all of these reasons we are of the opinion that the objection made to the admission of the waybills ought not to be esteemed tenable by this court. In a recent case (*Fourth National Bank of St. Louis* v. *Albough,* 23 U. S. Supreme Court Reporter 450), the Supreme Court ruled that *"the whole tendency of* the decisions and legislation is to enlarge the admissibility of hearsay where hearsay must be admitted or a failure of justice occur" when therefore convincing testimony like that under consideration which no one in the ordinary transactions of life

would feel inclined to distrust, is offered and admitted, one who invokes the aid of some technical rule of evidence to secure its exclusion and thereby suppress the truth, should see to it that his objection is made in due form at the proper time and that his exception is properly taken and assigned if on account of the admission of such testimony he expects to secure a reversal of the judgment by an appellate court.

And on that point we desire to call the court's attention to what is said in the case of *McCall* v. *U. S.*, 1 Dak. 312, where the Supreme Court of Dakota says:

> The principle of the rule requiring the best or highest evidence is founded on the presumption that there is something in the better evidence which is withheld adverse to the party resorting to inferior or secondary evidence. The general effect of the rule is to prevent fraud and to induce parties to bring before juries the kind of evidence least calculated to mislead or perplex them. And the reason of the rule limits the extent of its application; consequently it does not operate where the law itself obviates the presumption of fraud which would otherwise arise. Hence, in general to prove that a person is a public officer it is sufficient to show that he acted as such. So where a document is of a public nature a copy is sometimes admitted; for the production of the original is dispensed with on account of the inconvenience resulting from the frequent removal of such papers; and therefore the absence of the original affords no presumption of fraud. The admissibility of hearsay on the questions of public right is so well established upon authority that judges, the most fastidious in regard to this kind of evidence, do not pretend to dispute its competency, however widely they may differ upon its force and effect. * * * Accordingly, in *Rad-*

cliffe v. *Ins.*, 7 Johnson's Report, 50 Kent. Chief Justice, held as admissible a letter of Mr. Canning to Mr. Pickney printed in the City of Washington by persons who were printers to Congress, the printed letter composing part of a set of public documents transmitted to Congress by the President of the United States.

In the case of *Wyman* v. *Chicago*, 254 Ill. 207, the Supreme Court of Illinois, speaking to the proposition, says:

> Appellee offered a certified copy of a grant from the United States to the State of Illinois. * * * The copy of this grant was certified by W. H. Sandford, recorder of the general land office. The copy thus certified showed that the lands in contraversy were included in the lands selected according to the act above referred to. The objection made to this item of evidence by appellant was that it was incompetent, irrelevant and immaterial, and not the best evidence and *not admissible under the statute*. The objection was overruled. Appellant now insists that the court erred in admitting such copy for the reason that Section 20 of Chapter 51 of Hurd's Statute 1908 does not make the official certificate of recorder of the general land office evidence, but said Section is limited to any register or receiver of any land office, etc. We think the objection to the certified copy of the land grant was properly overruled for two reasons. First, the objection was not specific enough to save the point urged against the certificate; and, in the second place, the copy of the records in the land office duly *certified under the seal of the office is admissible in evidence without reference to the statutes under the common law.* *Lane* v. *Baumman*, 17 Ill. 95; *Sealy* v. *Wells*, 53 Ill. 120; I Greenl. on Ev. Sec. 483.

And in the case of *Amealy* v. *Michael*, 81 Ind. 262, the Supreme Court of Indiana, speaking to the proposition, says:

> The appellant insists that the certificates does not conform to the section 278 of the code. In this, we think, the appellant was right. The copies of statute of Pennsylvania read in evidence do not purport to have been taken from the printed statute books of the state. The copies as appear from the secretary's certificate were made from the original on file in his office and were certified under the seal of the state. Section 278 of the Code refers only to copy made from the printed statute book of several states. The mode of proving the statute law of another state prescribed by the code *should not be construed or held to exclude other legal modes of proving such statutes. Miller* v. *State ex rel.*, 61 Ind. 503. In this case it is held that Section 280 of the Practice Act providing that a copy of the proceedings and judgment of any justice of the peace of this state certified under his hand and seal as true and complete, shall be received as evidence in the courts of this state, did not exclude the original itself as evidence. So, too, it has always been held that the act of Congress which provides the acts of the legislatures of the several states shall be authenticated by having the great seal of the respective states affixed thereto, *is not exclusive of any other method of proof which* the states may adopt. 1 Greenl. Ev. Sec. 483. *Lathrop* v. *Blade*, 3 Bar. 483. Nor was the 278 section of the Code intended to be exclusive of the method of proving legislative acts of other states prescribed by the Ninth Section of the Acts of Congress of May 26, 1790. Nor, if so intended, could it have that effect. It might be important to prove in the courts of this state the existence of a statute in another state immediately upon its enactment and

before it might be printed in any book. Yet, if Section 278 is held to be the exclusive and the only method of proof, the existence of such a statute could not be established as the statutes of the State of Pennsylvania read in evidence in this case appeared to have been authenticated in accordance with the Acts of Congress upon the subject there was no error in their admission as evidence.

So we respectfully urge that the foregoing authorities, together with the other authorities cited under point four of our brief, sustain our contentions above set out.

VII.

We further contend that the courts judicially notice the vacancy in the position of Secretary of the Interstate Commerce Commission and that the Chairman of the Commission was in charge thereof and was discharging the duties usually devolving upon the Secretary during the vacancy of the secretaryship.

We feel that our position in that regard is sustained by the authorities cited under point "IV-F" of our brief, and we respectfully direct the court's attention to some of the utterances of the courts as follows:

In the case of *Keyser* v. *Hitz*, 133 U. S. 145, this court, speaking to the proposition, expressed itself in the following language:

> Another contention of the defendant is * * * that the certificate given under date of May 14, 1877, by J. S. Langworthy, as acting comptroller of the currency, did not meet the require-

> ments of the statute because it is argued that there is *no such officer known to the law.* R. S. 5154. This point was not specifically made in the court below, but there is nothing of substance in it even if it could properly be raised in this collateral proceeding. There is an officer designated a deputy comptroller of the currency who may exercise the powers and discharge the duties attached to the office of comptroller during a vacancy in that office or during the absence or inability of the comptroller. R. S. Sec. 178327. The certificate alluded to was from the office of the comptroller and was under the seal of that office. Besides this court takes judicial notice of the fact that Mr. Langworthy was, at the date of his certificate, deputy comptroller of the currency. And it will be assumed that at the date of his certificate he was authorized to exercise the powers and discharge the duties of the comptroller and was therefore at the time acting comptroller.

And again in the case of *Railroad* v. *Winans,* 17 Howard, 41, this court, speaking on the subject, used the following language:

> The objection taken to the patent that it is signed by an acting commissioner of patents and that the record contains no averment nor proof of his title to the office is not tenable. The court will take notice judicially of the persons who from time to time preside over the patent office whether permanently or transiently and the production of their commission is not necessary to support their official acts. *Wilson* v. *Rosseau,* 4 Howard, 686.

And in the case of *Whetherbee* v. *Dunn,* 32 Cal. 108, the Supreme Court of California on the same subject expressed itself in the following language:

Nor was it necessary before introducing the deed to prove that the person by whom it was executed held the office of tax collector at the time the sale was made. There is some conflict as to how far courts should go in the exercise of judicial knowledge in respect to who are occupants of inferior offices and tribunals. It is settled that they will take notice of who are the principal officers of state, heads of departments, foreign ministers, United States senators, marshals, sheriffs and the like, and *the genuineness of their signatures.* In Louisiana the courts take notice of the signatures of all executive and judicial officers to all official acts. (Citing authorities.)

The general rule upon this subject is that courts will take notice of whatever ought to be generally known within the limits of their jurisdiction. (1 Greenl. Ev. 11). We think that the courts ought at least to go so far as to take notice as to who fill the various county offices within their jurisdiction and the *genuineness of their signatures.*

And in the case of *Bachus Heater Co.* v. *Simonds,* 2 App. D. C. 297, the Court of Appeals for the District of Columbia, speaking on the proposition, expressed itself as follows:

> But apart from all this, there is another difficulty now existing in regard to the defendant, Simonds, and that is he is no longer Commissioner of Patents. He has been succeeded in that office by another person who would not be bound by decree made against his predecessor, after he has retired from office. The present incumbent of the office could not be compelled by any personal process against him, to execute a decree made against William E. Simonds, late Commissioner of Patents. This court is bound to take notice of the change in

> the incumbency of the office. It is a settled principle that courts of general jurisdiction are bound to take judicial notice of the heads of departments and the principal officers of the state; *of the public seals;* of the heads of bureaus in the departments, and of the judges of the United States Courts; and of the United States marshals. 1 Greenl. Ev., Sec. 6. It has been expressly held that the courts of the United States are bound to take judicial notice of the persons who occupy the position of the head of the patent office. (Citing authorities.)

And in the case of *Dominici* v. *U. S.*, 72 Fed. 47, the United States Circuit Court expresses itself as follows:

> The Courts takes judicial notice of the synopses of treasurer's decision of articles of the general regulations as amended by the department circulars referred to in said decisions.

And in the case of *State* v. *Evans*, 8 Humphrey, 112. the Supreme Court of Tennessee, speaking to the point, expressed itself in the following language:

> The answer is that Nathaniel Baxter resigned his office as attorney general for the Eighth District and John B. Campbell was appointed by the governor his successor. But it is insisted that the court cannot take notice of the acts of the executive though it may of the legislature. There is no foundation in reason for this distinction. In many of the states the appointment of large portion of the officers is vested with the executive. Will it be said, that every official act, with which these officers may be entrusted, must show the commission under which they act? Such a requisition would be absurd, but certainly not more so than to require it in this case. The fact that this is *pro tempore* appointment can make no difference. If the court

will officially know the acts of the governor in making appointments where the constitution vests that power exclusively in him there can be no reason why they may not also *officially know when he makes a pro tempore appointment.*

It appears to us that the foregoing authorities, as well as the other authorities cited in our brief, sustain our contention that the courts will judicially notice that the Chairman of the Interstate Commerce Commission was discharging the duties the secretary of the Commission ordinarily performed, and will give full force and effect to his acts of authentication of documents on file with the Commission made during the vacancy in the office of the secretary.

VIII.

We also contend that the conduct of the Chairman of the Interstate Commerce Commission in so certifying and authenticating the tariffs, schedules, rules and regulations, introduced and received in evidence by the trial court, was a giving by the Interstate Commerce Commission to the Acts of Congress in question, a contemporaneous construction which should be regarded as persuasive by the courts in placing a construction upon the Act in question.

This point, we feel, is sustained by the authorities cited under point IV-E of our brief. In the case of *U. S.* v. *R. R.*, 142 U. S. 621, this court, speaking to the proposition, expressed itself in the following language:

> We think the contemporaneous construction thus given by the Executive Department of the

> government and continued for nine years through six different administrations of that department—a construction which though inconsistent with the literalism of the act, certainly consorts with the equities of the case—should be considered as decisive in this suit. It is a settled doctrine of this court that in case of ambiguity the judicial department will lean in favor of a construction given to a statute by the department charged with the execution of such statute and, if such constructions be acted upon for a number of years, will look with disfavor upon any change whereby parties who have contracted with the government upon the faith of such constructions may be prejudiced. It is especially objectionable that a construction of a statute favorable to the individual citizen should be changed in such a manner as to become retro-active and to require from him the repayment of moneys, to which he had supposed himself entitled and upon the expectations of which he had made his contracts with the government. These principles were announced as early as 1827, in *Edwards, lessee*, v. *Darby*, 12 Wheat, 206-210, and have been steadily adhered to in subsequent decisions (citing authorities).

And in the case of *U. S.* v. *Healey*, 160 U. S. 141, this court, speaking to the proposition, recognized the doctrine and expressed itself in the following language:

> The object of this suggestion is to bring the present case within the rule often announced, that when the meaning of a statute is doubtful, great weight should be given to the construction placed upon it by the department charged with its execution. Where that construction has for many years controlled the conduct of public business. *Edwards* v. *Darby*, 12 Wheat, 206; *U. S.* v. *Philbrick*, 120 U. S. 52-59; *Robertson* v. *Downing*, 127 U. S. 613.

IX.

We feel therefore that the tariffs, rules and regulations, admitted in evidence by the trial court were properly admitted in evidence for they would have been admitted in evidence by any Federal trial court.

Our position is sustained by authorities cited under point IV C of our brief. In speaking to that point, the Supreme Court of the State of Michigan, in the case of *Gillman* v. *Riopelle,* 18 Mich. 158, expressed itself as follows:

> A copy of the plat of private claims on the River Rouge showing claim 61 with claim 118 on one side and claim 119 on the other, was attached to this document, but no question arises upon that. The defendant objected to the admission of this copy of the field notes in evidence, because it did not purport to be a true copy of the whole of the original, and because it did not appear to have been by the person, or officer, having charge of the original, compared with the original, and to be a true transcript therefrom and of the whole of such original. The Circuit Court judge overruled the objection.
>
> So far as this objection was based upon a variance between the form of the commissioner's certificate and the form prescribed by our statute for the authentication of copies of public documents, the ruling of the circuit judge was clearly correct. *The mode of authenticating the records, documents and proceedings of any of the departments or courts of the United States is governed by the laws of the United States and by the practice of such departments and courts and not by the statutes of the states.*

In the case of *Hawthorn* v. *City of Hoboken,* 35 N. J. L. 251, the Supreme Court of New Jersey, speaking of the proposition, uses the following language:

> The modes of authenticating documents of the departments of the United States is governed by the laws of the United States and the *practice of such departments,* and not by the statutes of the states.

And in the case of *Wickliffe* v. *Hill,* 3 Littell, 330, the court says:

> Whatever copy from any of the departments of the general government is *so authenticated or proved as to be admissible in the federal courts is admissible in the state courts.*

X.

We respectfully urge that the Honorable Kansas City Court of Appeals misconceived the law when it undertook to strike from the record the tariffs, rules and regulations, relied upon by the defendant below and admitted in evidence by the trial court.

It also appears from the opinion of the learned judge of the Kansas City Court of Appeals, that he has misconceived the effect of posting notices in the Grand Terminal Station at New York City as set out on pages 39 and 40 of the record. It will be noted on page 44 of the record that the plaintiff below was not relying upon the size of the type with which the notices, set out on page 39 of the record, were printed;

but the objection lodged against the notices is shown on page 40 of the record where the court will find the following colloquy:

> Mr. Hall: I object to the introduction of those notices in evidence because the posting of those notices does not comply with the requirements of the Interstate Commerce Act.
>
> By the Court: In what respect does it fail to comply?
>
> Mr. Hall: The Interstate Commerce Act requires the schedule themselves to be posted in every station of the defendant's company. I wish to further object to it for the reason, it appears upon the face of the notices that complete public files of the passengers' fare schedules are not on file in the station.
>
> Mr. Marley: Oh, no. They are on file in the station and these other additional places.
>
> The Court: The first clause in the notices says: "They are on file in the office." Suppose the complete rate from New York City to Kansas City is posted. Isn't that all that you would be interested in?
>
> Mr. Hall: I think it would be in this case, but I don't think that would comply with the Interstate Commerce Act. My first contention was the publishing of this notice was not the same as posting the schedule itself. Since reading this notice it appears that the complete files of the passenger files are not on file with the Grand Central Station at New York City which shows the law has not been complied with.

On page 41 of the record the court will find a copy of proceedings of the Interstate Commerce Commission, wherein the commission, availing itself of the authority conferred upon it by Section 6 of the Interstate Com-

merce Act, prescribed the form of notice (see page 43 of Record) which was posted (see page 39 of Record). The defendant's contention is that, having availed itself of the privilege granted it by the Interstate Commerce Commission, it was not necessary to hang up on the walls of the station all the tariffs. On page 43 of the record the counsel for plaintiff made objection to the introduction of the said proceedings of the Interstate Commerce Commission in the following language:

> Mr. Hall: I wish to object to the introduction of this for the reason it is not properly certified and for the further reason that the ruling of the Interstate Commerce Commission would not be binding upon this defendant in interpreting the interstate Commerce Act as applying to this plaintiff and that no matter what they ruled, wouldn't prejudice the rights of the plaintiff.

Out of a sense of fairness to the counsel for the defendant in error we will state that we do not think he attached any importance to the point on appeal, but the learned judge of the Kansas City Court of Appeals, who wrote the opinion for the court, seemed to attach great importance to the point and gives that as additional ground for affirming the judgment of the lower court, although it has been expressly ruled by this court that when a rate has been made out and filed with the Interstate Commerce Commission such acts of making out and filing with the commission give it validity, and the mere fact of posting is not essential to the validity of the tariffs, rules or regulations (see

K. C. S. RR. v. *Commission Co.*, 32 U. S. C. R., page 322, and *K. C. S. RR. Co.* v. *Carl*, 227 U. S. 652, and *Great Northern RR.* v. *O'Connor*, 232 U. S. 508, and the authorities therein cited).

XI.

We respectfully contend that the keeping of the tariffs on file in the ticket office of the Grand Terminal Station of New York City and posting of the notices of the form set out on page 39 of the record was a compliance with the law, having been made in conformity with the rules of the Interstate Commerce Commission; and the courts will take judicial notice of the rules and regulations adopted by the Commission.

We believe that the authorities cited under point "IV-D" of our brief sustain us in that contention.

And we would respectfully call the court's attention to the case of *Caha* v. *U. S.*, 152 U. S., page 221, where this court, speaking on the point, says:

> Another matter is this. The rules and regulations prescribed by the Interior Department in respect to contests before the land office were not formally offered in evidence and it is claimed that this omission is fatal and that a verdict should have been instructed for the defendant. But we are of the opinion, that there was no necessity for a formal introduction of such rule and regulation. They are matters of which courts of the United States take judicial notice. Questions of a kindred nature have been frequently presented and it may be laid down as a general rule deducible from the cases, that

> wherever by the express language of any act of Congress power is entrusted to either of the principal departments of government to prescribe rules and regulations for the transaction of business in which the public is interested, and in respect of which they have a right to participate and by which they are to be controlled, the rules and regulations prescribed in pursuance of such authority becomes a mass of that body of public records of which the courts take judicial notice. Without attempting to notice all the cases bearing upon the general question of judicial notice, we may refer to the following: *U. S.* v. *Teshmacher*, 22 How. 392; *Romero* v. *U. S.*, 1 Wall, 721; *Armstrong* v. *U. S.*, 13 Wall. 145; *Jones* v. *U. S.*, 137 U. S, 202; *Knight* v. *U. S. Land Association*, 142 U. S. 161; *Jenkins* v. *Collard*, 145 U. S. 546.

And in the case of *U. S.* v. *Eaton*, 144 U. S. 688, this court, again speaking to the point, says:

> Regulations prescribed by the President and by the heads of the departments under authority granted by Congress may be regulations prescribed by law so as to lawfully support acts done under them and in accordance with them and may thus have in a proper sense the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen where the statute does not distinctly make the neglect in question a criminal offense.

And the case of *Jones* v. *U. S.*, 137 U. S. 214, this court has said:

> All courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they admin-

ister or of its recognition or denial of the sovereignty of a foreign power as appearing from the public acts of the legislature and executive although those acts are not formally put in evidence nor in accord with the pleadings. (Citing authorities.)

And in the case of *Smith* v. *Chakopee*, 103 Fed. 240; 44 C. C. A. page 1. U. S. Circuit Court of Appeals for the Eighth Circuit, speaking on the subject, expressed itself in the following language:

> In our former opinion in this case, 97 Fed. 974, 38 C. C. A., 617, we held that we could not take judicial notice of the regulations of the lighthouse board prescribing the number and kinds of lights to be placed on the draws of bridges across navigable streams because the regulations were neither pleaded nor offered in evidence so far as the record discloses. In support of that view we cited the following cases: The E. A. Packer, 140 U. S., 360; The Clara, 55 Fed. 1021, 5 C. C. A. 390. Our attention was called by a petition for a rehearing to certain other cases wherein a different doctrine had been announced and it was claimed and on the strength of such references a rehearing was granted and the case has been reargued. In the case of *Caha* v. *U. S.*, 152 U. S. 211, certain rules and regulations which had been prescribed by the Interior Department in respect to contest before the land office were not formally offered in evidence and it was urged that because of such omission judicial notice of the same could not be taken. The court said with reference to this contention: "We are of the opinion that there was no necessity for a formal introduction in evidence of such regulations and rules. They are matters of which the courts of the United States take judicial notice. Questions of a kindred nature have been frequently presented and it may be laid down as a general rule deducible from the cases that wherever

> by the express language by any act of Congress power is entrusted to either of the principal departments of government to prescribed rules and regulations for the transactions of business in which the public is interested and in respect to which they have a right to participate and by which they are controlled, the rules and regulations prescribed in pursuant of such authority become a mass of that body of public records of which the courts take judicial notice." Reference is then made to the following cases: (Citing them.) We conclude therefore that we erred in our former opinion in refusing to take judicial notice of the regulations of the lighthouse board although they were neither pleaded nor offered in evidence. The regulations of the lighthouse board which are invoked in the present case were prescribed as it seems by the board pursuant to authority expressly conferred upon that body by an act of Congress approved August 7, 1882. It is our duty therefore to take judicial notice of such regulations as the board may have made for the lighting of the draws of the bridges across navigable streams pursuant to the authority conferred by the aforesaid statute.

And in the case of *Wilkins* v. *U. S.*, 96 Fed. 841; 37 C. C. A. 588, the United States Circuit Court of Appeals for the Third Circuit, expressed itself in the following language:

> The making of such rules and regulations, being then an executive act, we next inquire whether, when made, they have the force of law and whether the courts take judicial notice of their existence. That such is the case the authorities show. In *U. S.* v. *Eaton*, 144 U. S. 688, it was held that rules and regulations duly prescribed have the force of law. Regulations prescribed by the President and by heads of departments under authority granted by

Congress, may be regulations prescribed by law, so as to lawfully support acts done under them and in accordance with them and may thus have in a proper sense the force of law. In *Caha* v. *U. S.*, 152 U. S. 221, it was held that the court took judicial notice of them.

XII.

And we further urge that this case is a proper case for review in this court and in support of our contention call the court's attention to the authorities cited under points "I," "I-A," "I-B and "I-C" of our brief, and this court, having the right to review the action of the State Court, has the right and power to consider the entire record of the lower court and all the facts and circumstances in the record of the State Court, and to review and correct errors of the State Court.

Our proposition is sustained by the authorities cited under points "V," "V A," "V B" and "V C," of our brief. We will not take the time of the court to quote from the authorities therein cited, because we feel that the question has come so often before this court, that it is perfectly familiar with the points therein cited and we will now pass to the merits of the case. It is clearly apparent from the record below that the plaintiff was relying upon the decision of the Supreme Court of Massachusetts in the case of *Hooker* v. *B. & M. R. R.*, reported in the 209th Mass., and that the defendant below was relying upon the converse proposition. The Hooker case, having come to this court for review, the decision of the Supreme Court of Massachusetts was reversed and the

theory of the plaintiff repudiated and the theory of the defendant adopted. We feel, therefore, the case, having been tried by the plaintiff on the theory of the law laid down by the Supreme Court of Massachusetts, and the defense, being made on the converse of the proposition, that the defendant below, plaintiff in error here, is entitled to the advantage of the defense it urged below and should be permitted to avail itself of the decision of this court in the case of *B. & M. R. R.* v. *Hooker*, 233 U. S. page 97. It urges that this case, also, falls within the rule announced by this court, in the cases of *Pierce* v. *Express Co.*, 236 U. S. 278, and *Wells Fargo Express Co.* v. *Nieman Marcus Co.*, 227 U. S. 469, and *Express Co.* v. *Croninger*, 226 U. S. 491, and that the courts below should have given defendant below the protection of its tariffs, rules and regulations introduced and admitted in evidence by the trial court; and that its position below that the plaintiff below should be permitted to recover one hundred ($100.00) dollars, only, should be sustained by this court; and that the judgment of the Kansas City Court of Appeals, and the trial court should be reversed and the cause remanded and a new trial in conformity with the rule declared by this court in the Hooker case be granted. All of which is most respectfully submitted.

ALBERT S. MARLEY,
JOHN S. MARLEY,
Attorneys for Plaintiff in Error.

ROBERT J. CARY, *of Counsel.*

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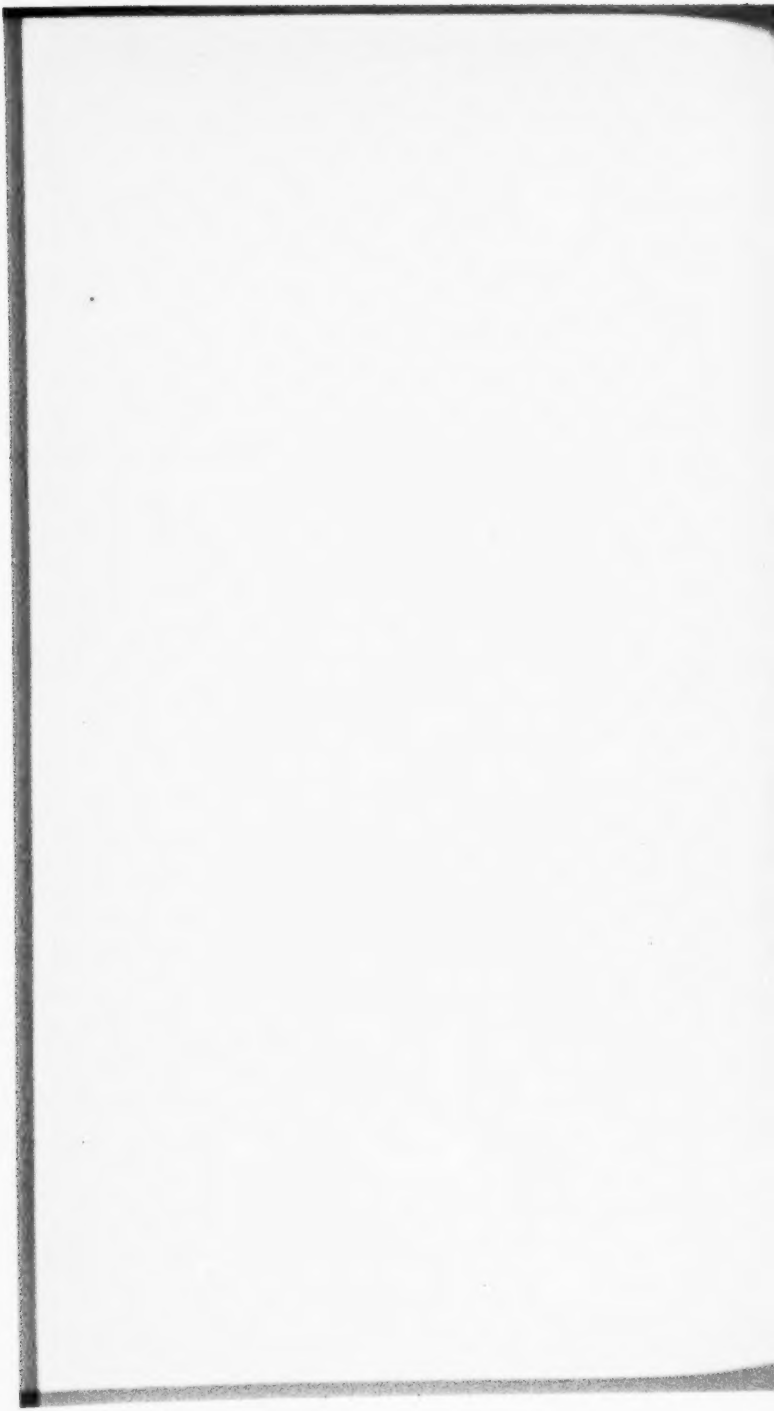

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1916.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY,
Plaintiff in Error,

v.

No. 118

MARY EDNA BEAHAM,
Defendant in Error.

IN ERROR TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

MOTION TO DISMISS WRIT OF ERROR.

Comes now the defendant in error, by her counsel appearing in that behalf, and moves this court to dismiss the

writ of error in the above entitled cause for want of jurisdiction, no Federal question being involved therein.

JUSTIN D. BOWERSOCK,
ROBERT B. FIZZELL,
Attorneys for Defendant in Error.

BRIEF ON BEHALF OF DEFENDANT IN ERROR ON MOTION TO DISMISS WRIT OF ERROR.

STATEMENT OF FACTS.

This action was instituted by the defendant in error to recover the value of a trunk and its contents checked for her by the plaintiff in error for transportation from New York to Kansas City, and lost in transit.

The defendant in error (hereinafter referred to as the plaintiff), on September 9, 1910, went to the Grand Central Station, New York City, purchased a first-class ticket for Kansas City over the lines of the plaintiff in error (hereinafter referred to as the defendant), the Michigan Central Railroad, and the Atchison, Topeka and Santa Fe Railroad, and checked her trunk from New York to Kansas City over the same route. The trunk was lost in some way, either in the Grand Central Station or in transit, and was never delivered to plaintiff.

On February 21, 1911, plaintiff instituted this action in the Circuit Court of Jackson County, Missouri, to recover the value of her baggage thus lost.

The defendant's answer set up provisions contained in the ticket sold plaintiff and in the baggage check given her, by which defendant's liability for baggage was limited to $100 unless a greater value was declared and paid upon. (Record, p. 7.) The answer also alleged that during the month of September, 1910, defendant had published and

l in the office of the Interstate Commerce Commission ain tariffs which contained the terms and conditions on ch defendant would receive and carry baggage, and by ch defendant's liability for baggage on interstate ship- nts was limited to $100 unless the passenger expressly pulated for a greater value and paid charges thereon in ordance with the schedules appearing in said tariffs. ecord, pp. 8-11.)

The plaintiff's reply denied that said tariffs and sched- s were published and filed with the Interstate Commerce mmission and in full force and effect as alleged by de- dant. (Record, p. 13.)

The case was tried before the court without a jury. At trial, the defendant offered in evidence certain papers rporting to be copies of tariffs and schedules filed by it th the Interstate Commerce Commission. These papers ntained the conditions governing defendant's liability for ggage as pleaded in its answer. The plaintiff objected to e introduction of all of these purported copies on the ound that they were not properly certified. (Record, pp. -38, 49, 58, 65, 68.) They were certified by the chairman the Interstate Commerce Commission. (Record, pp. 36, 8, 67). The certificates did not purport to show that said airman was the custodian of the records of the Commis- on, and in one instance (Record, p. 58) the certificate did ot even recite that the original was on file with the Com- ission.

The trial court postponed ruling on the admissibility of ese papers, saying that the question could be taken up in he briefs of counsel. (Record, p. 33.) The court there- fter overruled all of plaintiff's objections to evidence Record, p. 73), but gave an unqualified declaration of law hat the plaintiff was entitled to recover the reasonable value of her trunk and its contents. (Record, p. 74.) Judg-

ment was accordingly rendered for plaintiff in the sum o $1771.52. (Record, p. 14.)

The trial court did not find that the tariffs and schedules relied upon by defendant to limit its liability were duly published and filed with the Interstate Commerce Commission and in full force and effect in September, 1910. The defendant, in its declaration of law numbered III (Record pp. 75-77) requested the court to make such a finding, but the court refused. The court did declare, however, that "even if" the tariffs were properly filed and posted, the plaintiff would still be entitled to recover the reasonable value of her baggage. (Declaration of law No. 4, Record

The defendant appealed from the judgment of the circuit court to the Kansas City Court of Appeals, which affirmed the judgment for plaintiff in an opinion by Judge Ellison found on pages 88 to 93 of the Record.

The binding effect upon the state court of the decision in *Boston & Maine Railroad* v. *Hooker*, 233 U. S., 97, was never questioned by plaintiff nor is it properly an issue now in this cause. Its force was expressly recognized in the opinion in the state court. (Record, p. 91) The sole question presented and decided in the Kansas City Court of Appeals is, did the circuit court correctly give the first and peremptory declaration of law for plaintiff, shown at page 74 of the Record? This declaration is as follows:

> "The court declares the law to be that under the pleadings and the evidence in this case, plaintiff is entitled to recover from the defendant an amount which represents the reasonable value of her trunk and the reasonable value of such articles contained therein as constituted baggage."

The defendant attacked this peremptory instruction for plaintiff on the ground that the circuit court had disre-

garded the tariffs and schedules limiting defendant's liability for baggage. The plaintiff, on the other hand, contended that the trial court properly disregarded them in arriving at its decision, because the papers offered were not properly certified copies and were, therefore, not admissible in evidence. This question was briefed and argued upon its merits in the Kansas City Court of Appeals where the plaintiff's position was sustained and it was held that the papers offered were in fact incompetent. The judgment of the circuit court which disregarded the conditions and limitations of liability contained in the tariffs was therefore affirmed. The decision of the Kansas City Court of Appeals was based wholly on the inadmissibility of evidence.

This question of evidence, decided against defendant in the Kansas City Court of Appeals, namely, "Were the purported copies of defendant's tariffs admissible in the state court?" defendant now asks this court to pass upon. Defendant contends that under a provision of Section 16 of the Interstate Commerce Act, as amended June 29, 1906, (34 Stat. at L., 584, Chap. 3591) and June 18, 1910, (36 Stat. at L., 539, Chap. 309) the papers offered were properly certified and were admissible in evidence. The provision reads as follows:

> "The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the commission, and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of or extracts from

any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary, under the commission's seal, shall be received in evidence with like effect as the originals."

Defendant contends that under this provision of the Interstate Commerce Act the papers offered as copies of defendant's tariffs, bearing the certificate of the Chairman of the Commission, were admissible in evidence and could not be disregarded. We shall contend, on the contrary, that under the statute, such papers were not properly certified, were inadmissible in evidence, and were rightly disregarded by the state court.

Before reaching these contentions, however, there is a preliminary question which we regard as decisive. In the brief for the defendant upon the merits, counsel have assumed that the statutory provision referred to above applies to the state courts, and have urged that the ruling of the Kansas City Court of Appeals therefore involves a Federal question over which this court has jurisdiction. We desire by the present motion to question the correctness of that assumption, to submit that the statute does not apply and that therefore no Federal question is involved in this cause, and to ask that the writ of error be dismissed.

POINTS AND AUTHORITIES.

I.

If the sole issue in this case is the correctness of the decision of the Kansas City Court of Appeals upon a question in the law of evidence, apart from any Federal statute, this court does not have jurisdiction.

St. Louis I. M. & So. Ry. Co. v. *Taylor,* 210 U. S., 281, l. c. 291.

II.

The provision in the Interstate Commerce Act making copies of tariffs and schedules filed with the Commission receivable in evidence when certified by the Secretary under the Commission's seal, does not apply to the state courts.

34 U. S. Sts. at Large, 584, Chap. 3591;
36 U. S. Sts. at Large, 539, Chap. 309;
Clemens v. *Conrad,* 19 Mich. 170, l. c. 178, 179;
Carpenter v. *Snelling,* 97 Mass., 452, l. c. 458;
Griffin v. *Ranney,* 35 Conn., 239, l. c. 240;
Haight v. *Grist,* 64 N. C., 739, l. c. 741, 742;
Duffy v. *Hobson,* 40 Cal., 240, l. c. 243;
Stewart v. *Hopkins,* 30 Oh. St., 502, l. c. 525;
Davis v. *Richardson,* 45 Miss., 499, l. c. 505, 506;
Wade v. *Foss,* 96 Me., 230, l. c. 231, 232;
Weltner v. *Riggs,* 3 W. Va., 445;
Knox v. *Rossi,* 25 Nev., 96;

Woodward v. *Roberts,* 58 N. H., 503;
Cassidy v. *St. Germain,* 22 R. I., 53;
Kennedy v. *Roundtree,* 59 S. C., 324;
Wilson v. *McKenna,* 52 Ill., 43;
Garland v. *Gaines,* 73 Conn., 662;
Trowbridge v. *Addoms,* 23 Colo., 518;
Rowe v. *Bowman,* 183 Mass., 488;
Davis v. *Evans,* 133 N. C., 320;
Watson v. *Mirike,* 25 Tex. Civ. App., 527;
Colby v. *Cleaver,* 169 Fed., 206.

This rule of construction is followed by this court wit reference to the first ten amendments to the Constitution o the United States.

Eilenbecker v. *District Court of Plymouth County Iowa,* 134 U. S., 31;
Twitchell v. *Commonwealth,* 7 Wallace, 321;
Barron v. *Mayor of Baltimore,* 7 Peters, 243;
Fox v. *State of Ohio,* 5 Howard 410, l. c. 434.

III.

If the provision in the Interstate Commerce Act making certified copies of tariffs filed with the Commission admissible in evidence was intended by Congress to apply to the state courts, the provision is not binding. Congress has no power to prescribe rules of evidence for the state courts under the facts in this case.

Duffy v. *Hobson,* 40 Cal., 240, l. c. 243;
Sporrer v. *Eifler,* 1 Heisk. (48 Tenn). 633, l. c. 637-638;

Small v. Slocomb, 112 Ga., 279 l. c. 281;
Bumpass & Hicks v. *Taggart,* 26 Ark., 398;
Insurance Companies v. *Estes,* 106 Tenn., 472;
Davis v. *Richardson,* 45 Miss., 499;
Griffin Lumber Co. v. *Myer,* 80 Miss., 435;
Craig v. *Dimock,* 47 Ill., 308;
Richards v. *Roberts,* 195 Ill., 27;
Amos-Richia v. *Northwestern Mutual Life Ins. Co.,* 143 Mich., 684;
Wallace v. *Cravens,* 34 Ind., 534;
Wade v. *Foss,* 96 Me., 230;
People ex rel. Barbour v. *Gates,* 43 N. Y., 40;
Moore v. *Moore,* 47 N. Y., 467;
Jacobs v. *Spofford,* 34 Tex., 152;
Forcheimer v. *Holly,* 14 Fla., 239;
Dawson v. *McCarty,* 21 Wash., 314;
More v. *Clymer,* 12 Mo. App., 11;
King v. *Phoenix Ins. Co.,* 195 Mo., 290, 309;
Wharton on Evidence, Sec. 697.

IV.

The Kansas City Court of Appeals did not rule against the defendant upon the construction of any Federal statute or the existence of any Federal right. That court admitted the right claimed by defendant but found that defendant had failed to prove the facts necessary to bring the case within the operation of that right. Such decision does not involve a Federal question.

Smith v. *Adsit,* 23 Wallace, 368, l. c. 373, 374;
Mining Company v. *Boggs,* 3 Wallace, 304, l. c. 310;
Crary v. *Devlin,* 154 U. S., 619.

BRIEF OF ARGUMENT.

I.

If the sole issue in this case is the correctness of the decision of the Kansas City Court of Appeals upon a question in the law of evidence, apart from any Federal statute, this Court does not have jurisdiction.

No question of substantive law or involving the substantive rights of the parties was passed upon by the Kansas City Court of Appeals. The decision of the court was that papers purporting to be copies of defendant's tariffs and schedules were inadmissible in evidence because not properly certified. Clearly, unless the decision of the state court was contrary to the provisions of a Federal statute concerning evidence which the state court was bound to observe, the case does not involve a Federal question. As was said in the case of *St. Louis, I. M. & So. Ry. Co.* v. *Taylor*, 210 U. S., 281, l. c. 291,

> "But we have not the power to correct mere errors in the trials in state courts, although affirmed by the highest state courts. This court is not a general court of appeals with general right to review the decisions of state courts."

That this court is not concerned with the correction of any supposed errors of the state courts in determining questions of general law, has been established since the time of Chief Justice Marshall. Consequently, if the case at bar,

brought here on error to a state court, involves only the general principle in the law of evidence governing the admissibility of purported copies of railway tariffs certified in one way or another, the matter is one of state, not Federal concern. Unless the defendant can show that by virtue of the Federal Constitution or statutes it was entitled to have these purported copies admitted in evidence, it has no standing in this court. For this reason, defendant sets up the provisions of Section 16 of the Interstate Commerce Act, and insists that such purported copies were admissible under it and that the ruling of the state court excluding them involves a Federal question. If, therefore, Section 16 does not apply, this court has no jurisdiction.

II.

The provision in the Interstate Commerce Act making copies of tariffs and schedules filed with the Commission receivable in evidence when certified by the secretary under the Commission's seal, does not apply to the state courts.

Section 16 of the Interstate Commerce Act of 1887, as amended June 29, 1906 (34 U. S. Sts. at Large, 584, Chap. 3591) and June 18, 1910 (36 U. S. Sts. at Large, 539, Chap. 309) contains the following provision:

> "The copies of schedules and classifications and tariffs * * * * filed with the commission as herein provided, * * * * shall be preserved as public records in the custody of the secretary of the commission, and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of or extracts from any of said schedules, classifications, tariffs, * * * certified by the secretary, under the commission's seal, shall be received in evidence with like effect as the originals."

This provision does not expressly apply to the state courts. Nor is there anything in the Act which even impliedly indicates that Congress intended to attempt to regulate the trial of cases in such courts, or to prescribe the rules of evidence therein. Therefore, it must be construed as prescribing rules of evidence only for the Federal tribunals which are under the exclusive jurisdiction of Congress. This question of construction has frequently arisen in reference to the revenue stamp laws passed by Congress. These Acts have always provided in substance that no unstamped instruments required by law to be stamped should be "recorded or admitted or used in evidence *in any court.*" It has become firmly established as a rule of statutory construction that although the phrase "in any court" is general in its terms, it is intended when used by Congress in prescribing rules of evidence to apply only to the Federal tribunals.

The opinion of Chief Justice Cooley in *Clemens* v. *Conrad,* 19 Mich., 170, is especially in point. Speaking of the provision in the Revenue Act of 1866 forbidding the admission in evidence "in any court" of an unstamped instrument, the court, by the Chief Justice said (pp. 178, 179):

> "In attempting properly to construe it, it is proper to bear in mind the position of the body which enacted it relatively to the different legal tribunals of the country. Congress creates the courts which operate within the sphere of federal sovereignty, and administer the judicial power conferred by the Constitution of the United States. For them it prescribes rules of evidence, and may establish a course of practice. It has no such general power as regards the state courts. Those courts have another origin, and their rules of evidence, and courses of proceeding are prescribed by a different legislative body. Waiving, in the present case, any discussion of the question whether the State Courts are not agencies of state government which are

beyond the sphere of the taxing power of the nation, and fully at liberty to investigate in their own modes, under the laws of the state, the questions of fact which are put in issue before them, we think it a just and reasonable interpretation of the law of Congress, that the courts which are precluded from receiving unstamped instruments in evidence, are only the Federal courts, which are created under the general government, and for which Congress has general power to prescribe rules of evidence. In other words, we think that a rule of evidence laid down in general terms, is to be understood as applicable to those courts only for which the legislature prescribing it has general power to make rules, and not to other courts not expressly named, over which it has no such general power, and with whose proceedings it could interfere, if at all, only in exceptional cases."

The same rule of construction was laid down by Chief Justice Bigelow in delivering the opinion of the court in the case of *Carpenter* v. *Snelling,* 97 Mass., 452, a case arising under the Revenue Act of 1866. The court held (p. 458):

"The provision of the statute of the United States already cited does not in terms apply to the courts of the several states. The language of the enactment is only that no instruments or documents not duly stamped shall 'be admitted or used as evidence in any court' until the requisite stamps shall be affixed. This provision can have full operation and effect if construed as intended to apply to those courts only which have been established under the Constitution of the United States and by Acts of Congress, over which the Federal legislature can legitimately exercise control, and to which they can properly prescribe rules regulating the course of justice and the mode of administering justice. We are not disposed to give a broader interpretation to the statute. We entertain grave doubts whether it is within the constitutional authority of Congress to enact

rules regulating the competency of evidence on the trial of cases in the courts of the several states, which shall be obligatory upon them. We are not aware that the existence of such a power has even been judicially sanctioned. There are numerous and weighty arguments against its existence. We cannot hold that there was an intention to exercise it, where, as in the provision now under consideration, the language is fairly susceptible of a meaning which will give it full operation and effect within the recognized scope of the constitutional authority of Congress."

The same phrase "in any court" was considered in *Griffin* v. *Ranney*, 35 Conn., 239, and the same conclusion was reached, the court saying (p. 240):

"We are not aware of any attempt on the part of the legislature of any state to direct, or in any way interfere with, the course of proceeding and the administration of justice in the federal courts; nor, on the other hand, has Congress ever claimed the right by direct legislation to regulate the course of proceedings generally in the courts of the several states.

So far then as the act in question prescribes rules regulating the competency of evidence in courts of justice, it must be presumed that it was intended to apply only to those courts over which Congress had acknowledged and constitutional power, especially as the language of the act is fairly susceptible of that interpretation."

In *Haight* v. *Grist*, 64 N. C., 739, l. c. 741, 742, the court said:

"It is therefore in accordance with long settled and widely extended rules of constitutional construction that the general expression *'any court'* which is found in this statute of the United States, means only *'any court of the United States,'* and does not include courts

of the respective states. • • • We are therefore under no necessity of discussing the *power* of Congress to devolve upon state courts the duty of protecting the revenue of the United States, or its power to affect the laws of evidence as previously administered in such courts."

The rule of construction laid down above has likewise been approved in the following cases which deal with the words "in any court" as found in the revenue laws of Congress:

Duffy v. *Hobson*, 40 Cal., 240, l. c. 243;
Stewart v. *Hopkins*, 30 Oh. St., 502, l. c. 525;
Davis v. *Richardson*, 45 Miss., 499, l. c. 505, 506;
Wade v. *Foss*, 96 Me., 230, l. c. 231, 232;
Weltner v. *Riggs*, 3 W. Va., 445;
Knox v. *Rossi*, 25 Nev., 96;
Woodward v. *Roberts*, 58 N. H., 503;
Cassidy v. *St. Germain*, 22 R. I., 53;
Kennedy v. *Roundtree*, 59 S. C., 324;
Wilson v. *McKenna*, 52 Ill., 43;
Garland v. *Gaines*, 73 Conn., 662;
Trowbridge v. *Addoms*, 23 Colo., 518;
Rowe v. *Bowman*, 183 Mass., 488;
Davis v. *Evans*, 133 N. C., 320;
Watson v. *Mirike*, 25 Tex. Civ. App., 527.

The decisions referred to above which establish the principle that when Congress prescribes rules of evidence in general terms, such rules will be construed to apply only to the Federal courts, is in accord with the decisions of this court that the amendments to the Constitution of the United

States, which secure fundamental rights in certain judicial proceedings, apply only to proceedings in the courts of the United States. Although phrased in general language, they do not govern the administration of justice in the state courts.

Eilenbecker v. *District Court of Plymouth County, Iowa*, 134 U. S., 31;
Twitchell v. *Commonwealth*, 7 Wallace, 321;
Barron v. *Mayor of Baltimore*, 7 Peters, 243;
Fox v. *State of Ohio*, 5 Howard, 410, l. c. 434.

A similar rule of construction has been adopted in the Federal Court as to a state statute prohibiting in general terms the institution of suits. In *Colby* v. *Cleaver*, 169 Fed., 206, the court construed the Idaho statute requiring certain foreign corporations to perform certain conditions and providing that corporations failing to do so could not maintain actions "in any court of this state." It was held that the phrase referred only to the state courts over which the state legislature had unquestioned jurisdiction, and was not intended to apply to the Federal courts of Idaho.

We submit, therefore, that the provision of Section 16 of the Interstate Commerce Act prescribing the form of certification of copies of tariffs on file with the Commission, and making copies so certified admissible in evidence "in all judicial proceedings," applies exclusively to the Federal tribunals and does not limit or bind the state courts. This construction of the Act gives effect to the expressed intent of Congress, and avoids all question as to the power of Congress to prescribe rules of evidence for the state courts. It follows that the Kansas City Court of Appeals was not bound by the Federal statute. The question of the admissi-

ity of the purported copies of defendant's tariffs offered evidence is merely an issue of general law, and cannot in any view a Federal question.

III.

If the provision in the Interstate Commerce Act making rtified copies of tariffs filed with the Commission admissible evidence was intended by Congress to apply to the state urts, the provision is not binding. Congress has no power prescribe rules of evidence for the state courts under the cts in this case.

We believe, as we have heretofore urged, that this pro- ision applies only to the Federal courts, and that the ques- on of the *power* of Congress to prescribe rules of evidence the state tribunals is not involved in this case. As a *atter of construction*, the provision does not refer to ju- ial proceedings in the state courts. If it be held, however, at the statute applies to the Federal and state courts ke, then the provision, so far as it relates to the state urts, is of no effect, for such legislation is beyond the wer of Congress. The Constitution of the United States ll be searched in vain for any express or implied delega- on to Congress of authority so as to regulate the judicial ocedure of the states.

It is true that under Article IV, Section 1, of the Con- itution, each state is bound to give full faith and credit the public acts, records and judicial proceedings of every her state, and Congress is given power to prescribe by neral law the manner in which such acts, records and pro- edings shall be proved, and the effect thereof. But the

Constitution does not authorize Congress to prescribe the manner of proving papers in the state courts *when such papers are not the public records of a sister State.* The tariffs referred to in the Interstate Commerce Act are filed in the office of the Interstate Commerce Commission under the custody of the secretary, and are not public acts, records or judicial proceedings of any other state. They do not come within the class of documents referred to, and said section, therefore, does not authorize congressional action concerning them. Indeed, the express provision granting power to Congress to act with regard to the records of other states would seem to exclude any implied power along other similar lines. Since the states are "separate and distinct sovereignties," within the limits of the powers not specifically granted to the general government, Congress cannot prescribe the manner of proving such tariffs in the state courts.

Nor can it be contended that the clause of the Constitution entrusting to Congress control over interstate commerce, delegates power to legislate upon the question now presented. That question is entirely unrelated to interstate commerce. It is admitted freely that the rights and liabilities of the parties to this litigation are governed exclusively by the Federal statutes. It is not disputed that if the tariffs were properly filed and published under the Act of Congress, plaintiff's recovery is limited as therein provided. We will concede that if the question were whether or not the tariffs were properly filed and published, such question would involve a construction of the Interstate Commerce Act. In this case, however, the state courts have considered none of these matters, and have decided nothing with regard to the force or effect of the Act, or with re-

gard to the propriety or impropriety of a filing and publication thereunder. They have decided simply that the tariffs were not proved according to the requirements of the state courts in Missouri. They have passed upon no question but this—Under what conditions as to certification may copies of papers be received in evidence, without the testimony of a witness produced and sworn and subject to cross examination in open court? To hold that this question of general law is within the scope of a delegation of power to regulate interstate commerce and that by reason of such delegation Congress may prescribe rules of procedure for state courts, "would be to admit the right of Congress to control the materials on which the decisions of the courts of particular states should be based." Wharton on Evidence, Sec. 697, quoted in *Insurance Companies* v. *Estes*, 106 Tenn., 472, 484. It cannot be assumed that the states gave away by implication a power so essential to the independence of their courts. Congress might properly, under this clause, reserve jurisdiction of all cases involving interstate commerce to the Federal courts, but it might not dictate the procedure in such cases if left to the state courts.

It has been held in other fields surrendered to Congress that the states have not given up their right to control the admission of evidence in their own courts. The power of the national government to raise revenue for its own maintenance is as vital as any power entrusted to it, yet the decisions are uniform that the authority of Congress to impose a stamp tax upon contracts, promissory notes and similar instruments does not authorize it to prohibit the admission in evidence in the state courts of unstamped instruments.

Thus, in the case of *Duffy* v. *Hobson*, 40 Cal., 240, the court held (p. 243):

> "But if the Act of Congress under consideration had in terms embraced the state courts within its provisions, and had enacted that upon a trial held in one of those courts, a contract or other instrument of evidence, otherwise admissible, should not be admitted in evidence except upon compliance with its provisions, it would be our duty to declare its provisions in that respect null and void.
>
> Congress has no constitutional authority to legislate concerning the rules of evidence administered in the courts of this state, nor to affix conditions or limitations upon which those rules are to be applied and enforced."

In the similar case of *Sporrer* v. *Eifler*, 1 Heisk., (48 Tenn.) 633, the court said: (pp. 637-638):

> "The courts of the States do not exist by the authority of the United States, or by its permission, and are not objects over which its sovereign power extends, except, perhaps, for the purpose of protection. It does not possess over them even the incidental power of taxation.
>
> The people of the states possess all the powers of their original unlimited sovereignty, except such as have been delegated by them to the government of the United States, or are prohibited to the States by the Constitution. * * * There has been no delegation by the States to Congress of power or authority to legislate for the internal regulation of the States, nor are the people of the States prohibited by the Constitution from creating and regulating the courts of the states and the rules for their government. The legislature of the state is the only power which can enlarge or contract the rules of evidence or create and enforce new rules in the courts of the State."

In *Small* v. *Slocumb,* 112 Ga., 279, the same conclusion was reached after an exhaustive examination of the cases. The court, speaking through Chief Justice Simmons, said (p. 281):

> "After much reflection, and a careful and thorough investigation of cases in the courts of other states, we have come to the conclusion, however, that Congress has no power to prescribe rules of evidence for a state court. Under our system of government, the states retained all powers of sovereignty which were not granted to the general government by the Constitution. They had the power to create and establish their own courts, and to regulate the practice and procedure and to prescribe rules of evidence therein. There is nothing in the Constitution of the United States which expressly or by implication gives to Congress the power to prescribe rules of evidence for the courts of the states."

The power of Congress to prescribe rules of evidence for the state courts in connection with the revenue laws is likewise denied in the following cases:

Bumpass & Hicks v. *Taggart,* 26 Ark., 398;
Insurance Companies v. *Estes,* 106 Tenn., 472;
Davis v. *Richardson,* 45 Miss., 499;
Griffin Lumber Co. v. *Meyer,* 80 Miss., 435;
Craig v. *Dimock,* 47 Ill, 308;
Richards v. *Roberts,* 195 Ill., 27;
Amos-Richia v. *Northwestern Mutual Life Ins. Co.,* 143 Mich., 684;
Wallace v. *Cravens,* 34 Ind., 534;
Wade v. *Foss,* 96 Me., 230;

People ex rel. Barbour v. *Gates,* 43 N. Y., 40;
Moore v. *Moore,* 47 N. Y., 467;
Jacobs v. *Spofford,* 34 Tex., 152;
Forcheimer v. *Holly,* 14 Fla., 239;
Dawson v. *McCarty,* 21 Wash., 314;
More v. *Clymer,* 12 Mo. App., 11;
King v. *Phoenix Ins. Co.,* 195 Mo., 290, 309;

We submit, therefore, that, in the present case, any attempt by Congress to prescribe the manner of proving copies of railway tariffs in state courts would be of no effect because beyond the powers granted that body by the Federal Constitution.

Moreover, even if it could be held in the face of these authorities that Congress might under certain circumstances have such power, surely the power is such a doubtful one that its exercise should not be based upon implication. Not having expressed such intention, Congress should not be held to have intended to attempt its exercise in enacting section 16 of the Interstate Commerce Act. The provisions therein which prescribe the manner and certification of copies of tariffs and schedules filed with the Interstate Commerce Commission, and making copies so certified admissible in evidence in all judicial proceedings have ample scope in their application to the Federal courts over which Congress has exclusive and unquestioned jurisdiction to prescribe rules of evidence. They should not be stretched by implication to cover even doubtful ground.

Inasmuch, therefore, as the Federal statute is not binding upon the state courts, it is not involved in the decision in any way, and whether or not the Kansas City Court of

Appeals erred in holding that the copies of defendant's tariffs and schedules offered in evidence were not properly certified under that statute, is a question which does not challenge the attention of this court. Defendant was not entitled to have the state courts pass on the admissibility of the copies of its tariffs under the Federal statute, and the Court of Appeals could not bring that matter into the case by its holding. The question of their admissibility is one of general law and not one of Federal cognizance.

IV.

The Kansas City Court of Appeals did not rule against the defendant upon the construction of any Federal statute or the existence of any Federal right. That court admitted the right claimed by defendant but found that defendant had failed to prove the facts necessary to bring the case within the operation of that right. Such decision does not involve a Federal question.

The right claimed by the defendant in this case is that its liability for the plaintiff's baggage was limited by the conditions and provisions contained in defendant's tariffs and schedules. This right depended upon the proper filing of these tariffs with the Interstate Commerce Commission and their publication according to law. The Kansas City Court of Appeals expressly conceded the right as claimed by the defendant (Record, p. 91), but found that defendant had failed to prove the facts necessary to bring the case within that right because the evidence offered to prove the filing of the tariffs and their contents was incompetent, while no evidence whatever was offered to prove their

publication (Record, pp. 91-92.) The question at issue in the state court, therefore, did not involve, but was merely preliminary to the consideration of a Federal question.

In *Smith* v. *Adsit,* 23 Wallace, 368, the plaintiff alleged that the defendant had sold certain land in violation of the Act of Congress and suit was brought to enforce a trust. The state court dismissed the bill on the ground that no trust was proved. In holding that no Federal question was involved this court said (pp. 373, 374):

> "The record does not show that the question whether the sale of the land warrant was a nullity if made before the warrant issued, was passed upon, much less that it was decided against the complainant. * * * What amounts to a trust or out of what facts a trust may spring are not Federal questions, and on a writ of error to a state court we can review only decisions of Federal question."

In *Mining Company* v. *Boggs,* 3 Wallace, 304, the plaintiff brought suit for the possession of certain mineral lands, and recovered judgment in the state courts. The defendant claimed the property under an implied license from the United States, and brought the case to this court. It was held that this court had no jurisdiction, the court saying (p. 310):

> "However that may be, there was no decision of the court against the validity of such a license. The decision was that no such license existed; and this was a finding by the court of a question of fact upon the submission of the whole case by the parties, rather than a judgment upon a question of law."

So in *Crary* v. *Devlin*, 154 U. S., 619, the court said:

> "The motion to dismiss this cause is granted upon the authority of *Mining Co.* v. *Boggs*, 3 Wall., 304. There could have been no decision of the Court of Appeals against the validity of any statute of the United States, because it was found that the facts upon which the defendants below relied to bring their case within the statute in question did not exist. The judgment did not deny the validity of the statute, but the existence of the facts necessary to bring the case within its operation."

The principle upon which the above cases were decided should lead to the dismissal of the writ of error in the present case. It was there held that if the ruling of the state court does not question the validity of the Federal right claimed, but decides merely that the facts necessary to bring the case within the right fail to exist, the case does not involve a Federal question. In the case at bar the Kansas City Court of Appeals did not question the right of the defendant to limit its liability in the carriage of the plaintiff's baggage; it found that the defendant failed to prove the facts necessary to establish that right.

We submit that a Federal question is not involved in this case, and we respectfully ask that the writ of error be dismissed.

Respectfully submitted,

JUSTIN D. BOWERSOCK,

ROBERT B. FIZZELL,

Attorneys for Defendant in Error.

[redacted]

Supreme Court of the

[redacted]

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Brief on Behalf of Defendant

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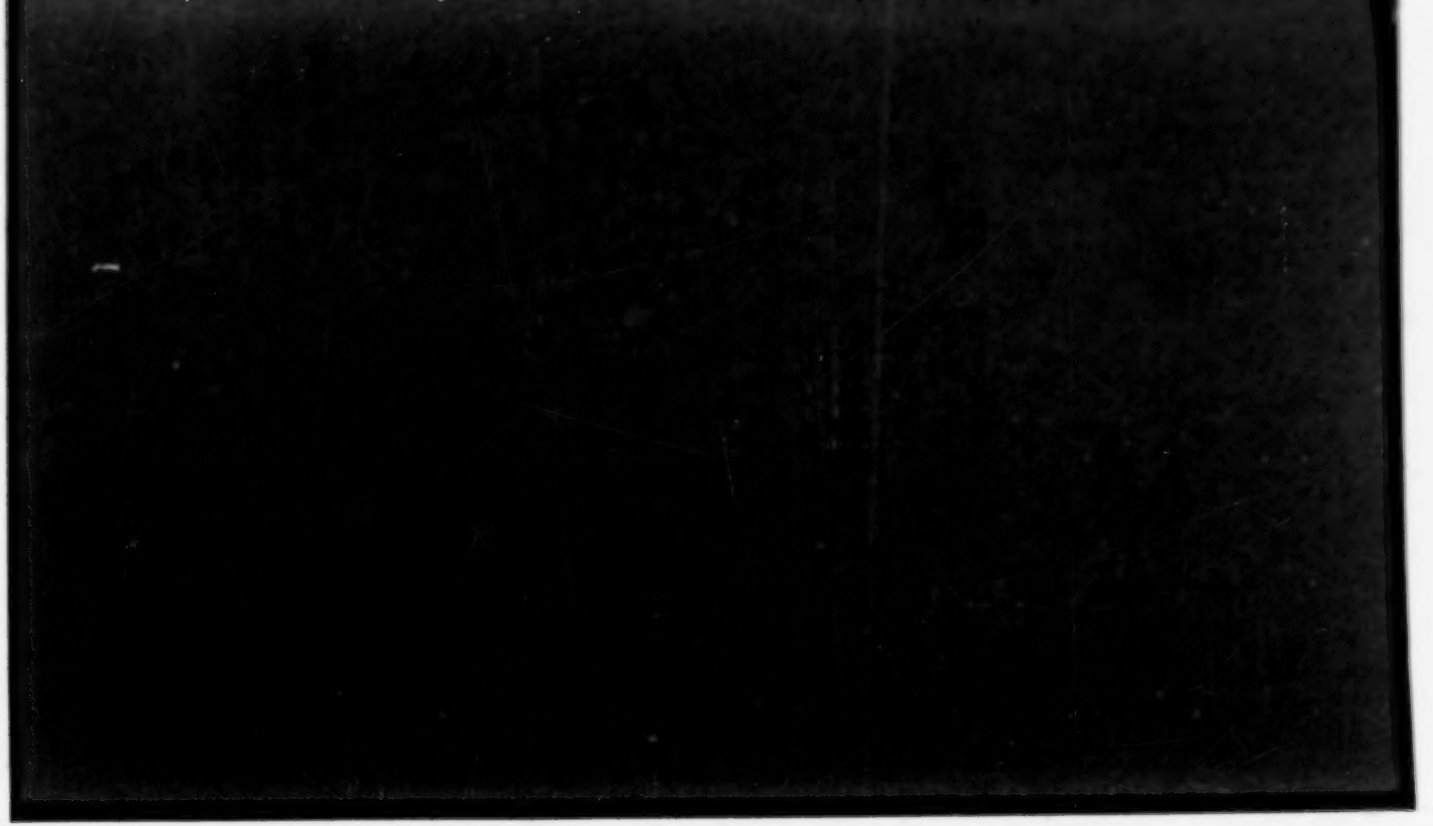

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TABLE OF CASES.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1916.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY,

Plaintiff in Error,

v.

No. 118

MARY EDNA BEAHAM,

Defendant in Error.

IN ERROR TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

Brief on Behalf of Defendant in Error.

STATEMENT OF FACTS.

On February 11, 1911, defendant in error (hereinafter referred to as plaintiff) instituted this action in the Circuit Court of Jackson County, Missouri, against the plaintiff in

error (hereinafter referred to as defendant) to recover the value of a trunk and its contents checked for her by the defendant for transportation from New York to Kansas City, and lost in transit.

The petition set out that the plaintiff on September 9, 1910, purchased from the defendant in New York City, at the Grand Central Station, a first-class ticket for Kansas City over the lines of the defendant (and connecting lines) and checked her trunk to destination over the same route; that the trunk was lost in some way and never delivered to plaintiff; and that she was damaged thereby in the sum of $1595.98, the value of the property so lost.

The answer set up certain provisions contained in the ticket sold to plaintiff and in the baggage check held by her, purporting to limit defendant's liability for loss of baggage to $100, unless a greater value was declared and paid for (Record, p. 7). The answer further set up certain tariffs alleged to have been in force during the month of September, 1910, published and filed by defendant in the office of the Interstate Commerce Commission, which tariffs contained a limitation of liability for baggage on interstate shipments of $100.00, unless the passenger expressly stipulated for a greater value and paid the charges thereon in accordance with schedules appearing in said tariffs. (Record, pp. 8-11.)

The reply denied that said tariffs were published and filed and in full force and effect, as alleged by defendant. (Record, p. 13.)

The case was tried before the court without a jury. At the trial, the defendant offered in evidence certain papers purporting to be copies of tariffs, including schedules, filed by it with the Interstate Commerce Commission. These papers contained the limitation of liability pleaded in the answer. The plaintiff objected to the introduction of all these

purported copies on the ground that they were not properly certified. (Record, pp. 32-38, 49, 58, 65, 68.) The certificates were made by the chairman of the Commission (Record, pp. 36, 58, 67) and did not purport to show that the chairman was the custodian of its records. In one instance, the certificate did not even recite that the original was on file with the Commission. (Record, p. 58.)

The trial court deferred ruling on the admissibility of these papers, saying that the question could be taken up in the briefs of counsel. (Record, p. 33). Thereafter, the court overruled all of plaintiff's objections to evidence (Record, p. 73), but gave an unqualified declaration of law that the plaintiff was entitled to recover the reasonable value of her trunk and its contents. (Record, p. 74.) Judgment was accordingly rendered for plaintiff in the sum of $1751.52 (Record, p. 14), the amount sued for, with interest.

The trial court did not find that the tariffs relied upon by defendant to limit its liability were duly published and filed with the Commission and in full force and effect as alleged in the answer. The defendant in its declaration of law, numbered III (Record, pp. 75-77), requested such a finding, but the court refused to make it. The court did give a declaration, however, (numbered 4) at the request of plaintiff, that "even if" the tariffs were properly filed and posted, plaintiff would still be entitled to recover the reasonable value of her baggage. (Record, pp. 74-75.)

From the judgment for plaintiff in the trial court the defendant appealed to the Kansas City Court of Appeals, which affirmed the judgment below in an opinion by Judge Ellison. (Record, pp. 88-93.)

The sole question presented and decided in the Kansas City Court of Appeals is whether or not the circuit court correctly gave the peremptory declaration of law for

plaintiff shown at page 74 of the record. This declaration is as follows:

> "The court declares the law to be that under the pleadings and evidence in this case, plaintiff is entitled to recover from the defendant an amount which represents the reasonable value of her trunk and the reasonable value of such articles contained therein as constituted baggage."

The defendant attacked this peremptory declaration on the ground that the circuit court had erroneously disregarded the tariffs limiting defendant's liability. Plaintiff, on the other hand, contended that the trial court properly disregarded them in arriving at its decision because the papers offered were not properly certified copies, and were, therefore, not admissible in evidence. This question was briefed and argued on its merits, and the plaintiff's position was sustained, the Court of Appeals holding that the papers offered were in fact incompetent. The judgment of the circuit court which disregarded the limitations contained in the alleged tariffs was, therefore, affirmed.

The effect of conditions and limitations of liability contained in tariffs governing interstate commerce and filed and published as provided by the Interstate Commerce Act was determined in this court in *Boston & Maine Railroad* v. *Hooker,* 233 U. S., 97. The binding effect upon the state court of this decision was never questioned by plaintiff, nor is it properly an issue now in this cause. Its force was expressly recognized in the opinion of the state court. (Record, p. 91.) The decision of the Kansas City Court of Appeals was based, not upon the question involved in the Hooker case, nor upon any determination of rights involved in that case, but was based wholly on the inadmissibility of evidence offered by the defendant.

This question of evidence decided against defendant in the Kansas City Court of Appeals was whether the purported copies of defendant's tariffs were admissible in the state court. The present writ of error brought by the defendant asks this court to pass upon that question. Defendant contends that under a provision of Section 16 of the Interstate Commerce Act of 1887, as amended June 29, 1906, (34 Sts. at Large 584, Chap. 3591) and June 18, 1910, (36 Sts. at Large 539, Chap. 309) the papers offered were properly certified and were admissible in evidence. This provision reads as follows:

> "The copies of schedules and classifications and tariffs * * * filed with the commission as herein provided, * * * shall be preserved as public records in the custody of the secretary of the commission, and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of or extracts from any of said schedules, classifications, tariffs, * * * certified by the secretary, under the commission's seal, shall be received in evidence with like effect as the originals."

Defendant contends that under this provision of the Interstate Commerce Act the papers offered as copies of its tariffs bearing the certificate of the chairman of the Commission were admissible in evidence, and could not be disregarded. Plaintiff contends, on the contrary, that under the statute such papers were not properly certified, were inadmissible in evidence, and were rightly disregarded by the state court.

POINTS AND AUTHORITIES.

I.

The decision of the Kansas City Court of Appeals that the purported copies of defendant's tariffs offered in evidence were inadmissible, was correct under the provisions of Section 16 of the Interstate Commerce Act.

Sec. 16, Interstate Commerce Act, as amended June 29, 1906, (34 Sts. at L., 584, Chap. 3591), and June 18, 1910, (36 Sts. at L., 539, Chap. 309).

Smith v. *United States,* 5 Peters, 292, l. c. 300;

Painter v. *Hall,* 75 Ind., 208;

State of Missouri v. *Foreman,* 121 Mo. App., 502;

Priest v. *Capitain,* 236 Mo., 446, l. c. 465;

Lothrop v. *Blake,* 3 Pa. St., 483;

Morris v. *Patchin,* 24 N. Y., 394;

Willock v. *Wilson,* 178 Mass., 68;

Ensign v. *Kindred,* 163 Pa. St., 638;

Edwards v. *Smith,* 137 S. W., 1161 (Tex. Civ. App.);

Kansas Pac. Ry. Co. v. *Cutter,* 19 Kan., 83;

Adams v. *Heckscher,* 80 Fed., 742;

Murdock v. *Hillyer,* 45 Mo. App., 287.

II.

The purported copies of defendant's tariffs offered in evidence were not admissible at common law.

United States v. *Percheman,* 7 Peters, 51;

New York Dry Dock v. *Hicks,* 5 McLean, 111, 18 Fed. Cas., No. 10.204;
Rich v. *Lancaster Railroad Co.,* 114 Mass., 514;
Inhabitants of Foxcroft v. *Crooker,* 40 Me., 308;
3 Wigmore on Evidence, Secs. 1674, 1677.

III.

Defendant's contention that the plaintiff's objections to the purported copies were not sufficiently specific, does not involve a Federal question, was not raised in the Kansas City Court of Appeals, and is not borne out by the record.

State v. *Foreman,* 121 Mo. App., 502, l. c. 509, 510.

IV.

Defendant's contention that the plaintiff, having failed to appeal from the ruling of the trial court admitting certain papers, could not urge their incompetency in the Kansas City Court of Appeals, does not involve a Federal question, and is without merit.

Lee v. *Mo. Pac. Ry. Co.,* 67 Kan., 402;
Gillett v. *Burlington Ins. Co.,* 53 Kan., 108;
Nance v. *Oklahoma Fire Ins. Co.,* 31 Okla., 208;
Huntington Nat. Bank v. *Loar,* 51 W. Va., 540.

V.

Defendant's contention that the plaintiff was estopped in the Kansas City Court of Appeals to point out the incom-

petency of the evidence disregarded by the trial court, does not involve a Federal question, and is without merit.

Fehlhauer v. *City of St. Louis,* 178 Mo., 635;
Vinson v. *Scott,* 198 Ill., 542;
Columbus State Bank v. *Carrig,* 3 Neb., 592 (unofficial), 92 N. W. 324;
Cowen v. *Eartherly Hardware Co.,* 95 Ala., 324;
Myers v. *Hale,* 17 Mo. App., 204;
Vaughan v. *Daniels,* 98 Mo., 230;

BRIEF OF ARGUMENT.

Assuming that this court has jurisdiction in this case, what is the question now presented for decision? Counsel for the plaintiff in error (referred to hereafter as the defendant) have lost sight of the distinction in this court "between writs of error to a court of the United States, and writs of error to the highest court of a state." *Central Land Co.* v. *Laidley,* 159 U. S., 103 l. c. 109. This case involves the correctness of the decision of the Kansas City Court of Appeals, and, therefore, only questions of a Federal nature can be reviewed. Questions of general law are not matters of concern in this court.

As is said by this court in *Waters-Pierce Oil Co.* v. *Texas,* 212 U. S. 86, l. c. 97-98:

> "The jurisdiction of this court to review the proceedings of the state courts, as we have had frequent occasion to declare, is not that of a general reviewing court of error, but is limited to the specific instances of denials of Federal rights, whether those pertaining to the constitutionality of Federal or state statutes, or to certain rights, immunities and privileges of Federal origin, specially set up in the state court and denied by the rulings and judgment of that court. Sec. 709, Rev. Stat. U. S. * * * We shall not, therefore, undertake to follow counsel in the consideration of all the questions argued, but shall limit our review to questions of a Federal nature which we deem to be properly made in this record and essential to the decision of the case."

So in *Sauer* v. *City of New York,* 206 U. S., 536, l. c. 546:

> "This court is not made, by the laws passed in pursuance of the Constitution, a court of appeal from the

highest courts of the States except to a very limited extent and for a precisely defined purpose. * * * It was from this provision (Article III) of the Constitution that Marshall in *Cohens* v. *Virginia*, 6 Wheat., 264, derived the power of this court to review the judgments of the courts of the States, and in defining the appellate jurisdiction the Chief Justice expressly limited it to questions concerning the Constitution, laws and treaties of the United States, commonly called Federal questions, and excluded altogether the thought that under the Congressional regulation the jurisdiction included any power to correct any supposed errors of the state courts in the determination of the state law."

The numerous questions raised by counsel in their brief for the defendant as to the sufficiency of the plaintiff's objections to the admission in evidence of the purported copies of defendant's tariffs (pp. 60-67), the right of the Kansas City Court of Appeals to disregard incompetent evidence in the absence of an appeal by the plaintiff from the judgment in her favor (pp. 67-69), the correctness of the ruling of the Court of Appeals that the plaintiff was not estopped to sustain the judgment under the peremptory instruction of the trial court in her favor (pp. 70-71), the admissibility of the purported copies of tariffs in evidence as a question of common law, apart from any Federal statute (pp. 72-78, 85-90, 94-97), the question of judicial notice in the state courts (pp. 90-94)—these are questions of state, not Federal law, and the decision of the state court thereon is final. This court does not have power "to correct mere errors in the trials in state courts although affirmed by the highest state courts. This court is not a general court of appeals with the general right to review the decisions of state courts."

St. Louis, I. M. & So. Ry. Co. v. *Taylor*, 210 U. S., 281, 291.

We shall ultimately take up these various contentions of defendant's counsel for, although this court has no jurisdiction of the questions of general law raised by counsel, we believe that the rulings of the state court thereon are correct. We shall first pass directly, however, to what we conceive to be the *only* issue in this cause which can possibly involve a Federal question.

I.

The decision of the Kansas City Court of Appeals that the purported copies of defendant's tariffs offered in evidence were inadmissible, was correct under the provisions of Section 16 of the Interstate Commerce Act.

Section 16 of the Interstate Commerce Act, as amended June 29, 1906, (34 Sts. at L., 588, Chap. 3591), and June 18, 1910 (36 Sts. at L., 539, Chap. 309), prescribes the manner of proving copies of tariffs filed with the Interstate Commerce Commission. If it be held (as we are assuming in this argument upon the merits) that such provision was intended by Congress to apply to actions in the state courts, and that in enacting it Congress was within its constitutional powers, then it was the duty of the Kansas City Court of Appeals to follow the Federal statute, and whether or not it did so in the present case is a Federal question. We believe that the decision of the Court of Appeals was correct under the Federal enactment referred to, and that the defendant was not denied any right given it by said statute.

Section 16 provides as follows:

> "The copies of schedules and classifications and tariffs * * * filed with the commission as herein provided, * * * shall be preserved as public records in the custody of the secretary of the commission,

and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of or extracts from any of said schedules, classifications, tariffs, * * * *certified by the secretary*, under the commission's seal, shall be received in evidence with like effect as the originals." (Italics ours.)

The papers which purported to be copies of defendant's tariffs and schedules and which were offered in evidence in the trial court were not certified by the secretary of the commission as the Act provides, but purported to be certified by the chairman. (Record, pp. 26, 56, 67.) None of the certificates showed that the chairman was the custodian of the original records—indeed the statute expressly makes the secretary such custodian. One certificate (Record, p. 56) did not even show where the original papers were filed. It follows therefore, that the papers offered were not certified according to the Federal Act, and were not competent evidence under its terms.

The rule is fundamental that statutory provisions governing the authentication of records must be followed with the utmost strictness.

In *Smith* v. *United States*, 5 Peters, 292, this court said (p. 303):

> "Where copies are made evidence by statute, the mode of authentication required must be strictly pursued. The legislature may establish new rules of evidence, in derogation of the common law, but the judicial power is limited to the rule laid down."

In *Forster* v. *Hall*, 75 Ind., 398, records kept in a public office within the state could, by virtue of a statute,

be proved by the attestation of the keeper of the instruments "that the same are *true and complete* copies of the instruments in his custody." It was held that the certificate of an auditor that certain assessment lists were *true* copies of the lists on file in his office was insufficient, and that the papers were not admissible in evidence. The court said (p. 214):

> "Where the statute prescribes the mode of authentication, no other mode will do."

A question similar to that presented in the case at bar has frequently arisen under Section 905, Rev. Sts., U. S., concerning the authentication and proof of the judicial proceedings of a state court. Under said Act, such proceedings shall be proved in the courts of any other state by the attestation *of the clerk*, with the seal of the court, and the certificate of the judge that the attestation is in due form. In a number of cases it has been held that a record attested by a deputy clerk of the court, instead of by the clerk, is not admissible. These cases are especially applicable to the case at bar.

In *State of Missouri* v. *Foreman*, 121 Mo. App., 502, the court so held saying (p. 509):

> "The Act of Congress requires that the clerk shall make the certificate. This means that the clerk *himself* shall do so, and not by or through his deputy. * * * The clerk derives his authority from the law of Congress, and not the law of the state."

The above case is cited with approval in the recent case of *Priest* v. *Capitain*, 236 Mo., 446, l. c. 465.

In *Lothrop* v. *Blake*, 3 Pa. St., 483, it was likewise held that the transcript of an Ohio judgment could not be properly certified by a deputy clerk, although an Ohio statute enabled the deputy to perform the duties of his principal, the court saying (p. 495) that to admit the record under the Ohio statute "would enable the several states to alter and control an Act of Congress."

The same rule is laid down in

Willock v. *Wilson*, 178 Mass., 68;
Morris v. *Patchin*, 24 N. Y., 394;
Ensign v. *Kindred*, 163 Pa. St., 638;
Edwards v. *Smith*, 137 S. W., (Tex. Civ. App.), 1161;
Kansas Pac. Ry. Co. v. *Cutter*, 19 Kan., 83.

In the New York and Massachusetts cases just cited, it was held that the certificate of the judge that the attestation was in due form would not cure the defective certification by a deputy clerk.

The cases discussed above illustrate the strictness with which the courts enforce this statutory provision. A deputy clerk is a ministerial officer who can in general perform the duties of his principal. Thus, it is held in the Federal courts, where the Federal statute referred to does not apply, that a deputy clerk may certify to copies of judicial proceedings in his court. *National Acc. Soc.* v. *Spiro*, 94 Fed., 750. But the rule is firmly established that under a *statute* requiring the certificate of the clerk, that of his deputy is not sufficient.

A similar rule is established in Missouri under Section 1778, Rev. Sts., Missouri, 1909, providing for personal service upon non-resident defendants. By said statute service shall be proved by the affidavit of the officer making it, such affidavit to be made before *the clerk* or judge of the court of which affiant is an officer. Such clerk or judge shall certify to the official character of the affiant, and attest the same with the seal of the court. It is held that the language of this statute must be literally construed, and that a certificate made by a deputy clerk, instead of the clerk, is insufficient.

Priest v. *Capitain*, 236 Mo., 446;
Adams v. *Heckscher*, 80 Fed., 742;
Murdock v. *Hillyer*, 45 Mo. App., 287.

In the case at bar the purported copies of tariffs offered in evidence by the defendant were not certified in accordance with the Federal statute. The Act expressly names the secretary of the Interstate Commerce Commission as the person to certify copies of the tariffs filed with the Commission. The papers offered by the defendant were certified to by the chairman of the Commission—an officer who did not have the custody of the originals, and who was not authorized, either at common law or by statute, to authenticate the papers in question.

We submit that the Kansas City Court of Appeals ruled correctly upon the only issue in this cause which can possibly involve a Federal question, and we respectfully ask that the judgment of that court be affirmed.

II.

The purported copies of defendant's tariffs offered in evidence were not admissible at common law.

We believe that the foregoing discussion of the effect of Section 16 disposes of the only issue which can possibly involve a Federal question in this cause. Whether or not such papers were admissible apart from the Federal statute, and as a matter of common law, is a question in the general law of evidence with which this court has no concern.

Los Angeles Farming & Milling Co. v. *City of Los Angeles,* 217 U. S., 217;
Central Vermont Ry. Co. v. *White,* 238 U. S., 507, l. c. 515.

However, inasmuch as counsel for defendant have gone outside this Federal question and have argued the matter of admissibility generally, we wish to point out that the purported copies, certified by the Chairman of the Interstate Commerce Commission were not admissible at common law, apart from statute.

A copy of an original paper, though certified, is nevertheless only secondary, hearsay evidence, unless it is proved to be a copy by a witness testifying under oath, subject to cross examination. Accordingly the traditional common law rule was to reject all certificates and certified copies as evidence except when made with express authority. 3 Wigmore on Evidence, Secs. 1674, 1677. In the

United States, however, there has become established, as an exception to the hearsay rule, the principle that

> "The lawful custodian of a public record has, by implication of his office, and without express order, an authority to certify copies."
>
> 3 Wigmore on Evidence, Sec. 1677, p. 2102.

The fundamental condition on which this exception to the hearsay rule is based is that the certificate be made by the public officer *having the custody of the original instrument to which he certifies.* The latter's power to authenticate copies is implied solely from his office of custodian of the original document. This was stated clearly by Chief Justice Marshall in *United States* v. *Percheman,* 7 Peters, 51, a case which did much to establish the principle in this country. The court said (pp. 84, 85):

> "At the trial the counsel for the claimant offered in evidence a copy from the office of the keeper of public archives of the original grant on which the claim is founded. * * *
>
> We think that on general principles of law a copy given by a public officer *whose duty it is to keep the original* ought to be given in evidence." (Italics ours.)

Literally scores of cases could be cited to show that it is only the custodian of the original instrument, who may certify to copies so as to make them admissible in evidence without further proof. The case of *New York Dry Dock* v. *Hicks,* 5 McLean, Ill., 18 Fed. Cases, p. 151, Fed. Case No. 10204, states the unquestioned rule:

> "The law authorized the deed to be recorded at first by the register of probate, but the records kept

by him have been transferred by law to the register of deeds and they are now legally in his custody. Under such circumstances the keeper of the records may certify copies the same as the register of probate might have certified had he retained the custody of the original records. The law which makes copies evidence when duly certified is satisfied by the certificate of the person who has the legal custody of the records. *No other individual could certify copies. This right appertains to him from the legal possession of the records.*" (Italics ours.)

The rule is thus stated in 3 Wigmore on Evidence, Sec. 1677, p. 2103:

> "The certifier must be the lawful custodian of the particular document; his authority, then, is to be sought in the administrative law which declares the duties of the various officers."

The Interstate Commerce Act, Sec. 16, makes the secretary of the commission the lawful custodian of all records filed with the commission. The chairman of that body has no more authority to certify to copies of such records than a court would have to certify to papers filed with and under the custody of the clerk.

In *Rich* v. *Lancaster Railroad Co.*, 114 Mass., 514, a paper certified by the chairman of the board of county commissioners was held inadmissible, the court, through Chief Justice Gray, saying (p. 514):

> "The clerk and not the chairman of the county commissioners was the proper officer to make records of their doings and to attest copies thereof. The memorandum of their action, not being the original record,

> nor certified by their clerk, nor proved by the oath of any one who had examined the original to be a true copy, was wrongly admitted in evidence."

So in *Inhabitants of Foxcroft* v. *Crooker,* 40 Me., 308, the court held (p. 310):

> "The copy of the record of the proceedings of the selectmen is attested by the chairman, who is not a recording officer, and his attestation is not the proper verification of a record."

Since, then, in the case at bar, the purported copies were not certified by the custodian of the original records but by a wholly separate and different officer, they did not come within the exception to the hearsay rule, and were properly held incompetent by the Kansas City Court of Appeals.

We have carefully examined the cases cited in defendant's brief, but in none of them was a certified copy of a public record held admissible unless authenticated by the custodian or keeper of the original. A number of the cases cited specifically recognize the rule as stated above. *U. S.* v. *Perchman,* 7 Pet., 85 (Brief, p. 76), *U. S.* v. *Wiggins,* 14 Pet., 346 (Brief, p. 77), *U. S.* v. *Richards,* 4 Dallas, 415 (Brief, p. 79), *Meehan* v. *Forsyth,* 24 Howard, 175 (Brief, p. 81). Other cases cited by counsel merely illustrate the general principle that official documents purporting to be printed by the official printer under the authority of the government are admissible without further authentication. 3 Wigmore on Evidence, Sec. 1684. Still other cases fall within other well recognized exceptions to the hearsay rule which are not involved in this case, and which we do

not pause to examine in detail because the question here in issue concerns only purported copies of public records, not authenticated by the keeper of the original papers. Under no theory are such papers admissible.

Counsel for the defendant have suggested that the secretary of the Interstate Commerce Commission was dead and for this reason the papers offered were competent. No evidence of this fact was offered, however, and, of course, the mere statement of counsel cannot take the place of competent legal proof of the fact, if it was a fact. *Hewit v. Bank of Indian Ter.*, 64 Neb., 463, l. c. 472. The suggestion that the state courts of Missouri will be compelled by this court to take judicial notice of any death occurring in such office (Def.'s Brief, pp. 90-94) does not deserve serious consideration.

Moreover, assuming that this court will review the decision of the state courts on a question of the admissibility of evidence at common law, and will hold that the state courts were bound to take judicial notice of the death of the secretary of the Interstate Commerce Commission, the fact of such death did not give the chairman of the commission power to authenticate copies of tariffs. Under the established rule of the common law, only the legal custodian of public records may authenticate copies, and the Chairman of the Interstate Commerce Commission was not such officer in the present case. There is nothing in the Act giving the chairman or other individual member of the Commission any authority whatever over its records. The papers offered by the defendant did not even purport to be authenticated by the custodian of the original records. They were therefore inadmissible in evidence, and the Kansas City Court of Appeals correctly so held.

III.

Defendant's contention that the plaintiff's objections to the purported copies were not sufficiently specific, does not involve a Federal question, was not raised in the Kansas City Court of Appeals, and is not borne out by the record.

When the defendant offered the papers in evidence, the plaintiff objected to their introduction on the ground that they were not properly certified (Record, pp. 32-38, 49, 58, 65, 68). The Court of Appeals considered this question on its merits and held that the papers were not properly certified and were inadmissible (Record, pp. 91-92). Defendant now contends that the plaintiff's objections to the admissibility of the papers offered were not sufficiently definite (Def.'s Brief, pp. 60-67).

We submit that the question of how specific an objection to evidence must be made in the trial of a case in a state court, is not an issue arising under the Constitution and laws of the United States. A question so peculiarly dependent upon state rules and state practice cannot possibly constitute a federal question subject to review in this court. This court has no jurisdiction to pass upon the point.

Furthermore, the contention now urged by counsel was not presented in the state court but appears for the first time in this tribunal. The question was argued and decided upon its merits in the Kansas City Court of Appeals, and the argument that plaintiff's objections were not sufficient to demand the consideration of the question on appeal comes too late.

Moreover, under the decision in *State* v. *Foreman*, 121 Mo. App., 502, l. c. 509, 510, a purported copy of a public

record, not properly certified, is inadmissible for any purpose, and a general objection is sufficient to save the exception to its reception.

IV.

Defendant's contention that the plaintiff, having failed to appeal from the ruling of the trial court admitting certain papers, could not urge their incompetency in the Kansas City Court of Appeals, does not involve a Federal question, and is without merit.

At the trial of this cause in the circuit court, the court admitted certain papers over the plaintiff's objections. These papers, as we have pointed out, were not properly certified and were incompetent. In its final decision, however, the trial court disregarded the evidence which it had improperly admitted, and gave judgment for the plaintiff. This judgment was sustained by the Court of Appeals. Defendant now contends that because the plaintiff failed to appeal from the rulings of the trial court overruling her objections to the papers, she could not object to their competency in the appellate court (Def.'s Brief, pp. 67-69).

Here, again, the contention does not involve a Federal question. Whether the plaintiff should (or could) have appealed from a judgment in her favor, whether she could sustain the peremptory finding of the trial court in her favor by pointing out its correctness on all of the competent evidence in the case, whether the Court of Appeals could affirm the judgment as being for the right party, these are questions of state law, and can not be reviewed in this court.

The ruling of the state courts, however, was correct. Plaintiff did not seek, on the appeal, to take advantage of any errors committed against her. The trial court gave judgment for the plaintiff as prayed in her petition, and she could not have appealed from the judgment had she so desired. She was not "aggrieved by judgment" in her favor, and only such party can appeal (Rev. Stats. Mo., 1909, Section 2038). Plaintiff relied entirely upon the peremptory finding of the lower court in its first declaration of law, namely, that under the pleadings and the evidence the plaintiff was entitled to recover the actual value of her baggage.

Whether the trial court properly gave a peremptory declaration of law for the plaintiff was a question to be decided upon the *competent* evidence in the case. The Court of Appeals was not bound to close its eyes to the correctness of the judgment of the trial court, and to reverse the judgment because the trial court erroneously admitted incompetent evidence which it later disregarded. The mere statement of the proposition seems sufficient, but authorities directly in point are not wanting.

In *Lee* v. *Mo. Pac. Ry. Co.*, 67 Kan., 402, plaintiff, a child, sued for personal injuries, and on cross examination stated that he did not know the nature of an oath. Defendant thereupon moved to strike out all of plaintiff's testimony as incompetent, but the lower court refused to allow this. The trial court did, however, sustain defendant's demurrer to the evidence, and plaintiff appealed. The defendant, of course, did not appeal. The question under discussion was specifically presented for the court said that not considering the plaintiff's testimony, the lower court prop-

erly sustained defendant's demurrer, but that "probably, if this testimony is to be considered, the demurrer should have been overruled." The Supreme Court then passed upon the competency of plaintiff's testimony, held that it was incompetent, and sustained the judgment for respondent. In the syllabus the court stated the rule applicable to the case at bar:

> "A ruling sustaining a demurrer to the evidence will not be reversed, notwithstanding that sufficient evidence was actually admitted by the trial court to make a *prima facie* case for plaintiff, where a part of the evidence essential for that purpose was incompetent and admitted over proper objection, although it was not formally stricken out, and no notice was given plaintiff that it was to be disregarded."

Again, in *Gillett* v. *Burlington Ins. Co.*, 53 Kan., 108, plaintiff sued on an insurance policy and the defense was plaintiff's failure to furnish proof of loss. At the trial plaintiff offered evidence to show a waiver of the provision for furnishing proof of loss, and the court admitted this evidence over defendant's objections. Defendant demurred to plaintiff's evidence and the trial court sustained the demurrer. Plaintiff appealed, claiming that the evidence of waiver in the case made it error for the trial court to sustain defendant's demurrer. The defendant did not appeal. The supreme court examined the evidence of waiver, held that it was incompetent, and affirmed the judgment for defendant, saying:

> "The admissibility of the testimony was fairly challenged and the objection should have been sustained. It was within the province of the court to correct the

error at any time before final disposition of the case, and it was not improper to strike out or to disregard the incompetent testimony upon demurrer to the evidence. As the plaintiff failed to establish an essential element of her case, it must be held that the district court ruled correctly in sustaining the demurrer."

The same view was taken in *Vance v. Oklahoma Fire Ins. Co.*, 31 Okla., 208, the court saying:

"In considering a demurrer to the evidence, a trial court may disregard incompetent testimony admitted over proper objections; and, on appeal to this court from a ruling sustaining a demurrer to the evidence, incompetent evidence admitted over objection will not be considered for the purpose of reversing such ruling, and, if the competent evidence admitted fails to make out a *prima facie* case for the party against whom the demurrer is directed, the ruling of the trial court will be sustained." (Citing authorities.)

Again, in *Huntington Nat. Bk. Case*, 51 W. Va., 369, the court, in the syllabus, said:

"Upon a demurrer to evidence, in applying the rule laid down by this court in *Board v. Railway Co.*, 46 W. Va., 655, the demurree is not entitled to the benefit of evidence offered in the case by him, not to any inferences to be drawn therefrom, which evidence is incompetent and inadmissible, but which has been improperly admitted over the objection of demurrant."

The decisions in the four cases cited above are directly applicable to the present case. In each of them the appellant desired the court of review to abrogate its functions as a court in considering the merits of the entire case, and to reverse the ruling below in favor of the respondent although that ruling was correct upon all of the competent evidence in

the case. In each of them the judgment below was affirmed.

In the case at bar the judgment of the trial court was for the right party upon all of the competent evidence in the case. If the Court of Appeals had reversed the judgment, the amazing result would have been a case reversed because the trial court disregarded *incompetent* evidence *offered by the losing party.* We submit that the Court of Appeals correctly refused to so hold, and rightly affirmed the judgment for the plaintiff.

V.

Defendant's contention that the plaintiff was estopped in the Kansas City Court of Appeals to point out the incompetency of the evidence disregarded by the trial court, does not involve a Federal question and is without merit.

At the trial of this case the court gave a declaration of law (numbered 4) for the plaintiff that "even if" the defendant's tariffs were filed and posted, the plaintiff would still be entitled to recover the reasonable value of her baggage (Record, pp. 74-75). Defendant now contends that by asking and obtaining this declaration, plaintiff was estopped in the Court of Appeals to point out the incompetency of the purported copies of papers offered in evidence by defendant and objected to by plaintiff (Def.'s Brief, pp. 70-71).

The contention cannot possibly involve a Federal question. Whether or not the plaintiff was "estopped" in the Court of Appeals to raise certain points was a question for that court to decide.

Defendant's argument is without merit, however, because, on the competent evidence in the case, the defendant did not establish a defense to the cause of action, and the trial court properly gave a peremptory declaration of law for the plaintiff (Record, p. 74, Declaration of Law No. 1). In such a case, any error in the instructions given by the court is immaterial.

Thus, in *Fehlhauer* v. *City of St. Louis,* 178 Mo., 635, the plaintiff sued the city and others for injuries sustained when plaintiff fell in an open trap door in the walk. The city asked a peremptory instruction in its favor but this was refused, the court submitting the case to the jury under certain instructions. A verdict was returned for the defendant city and the plaintiff appealed, assigning as error an instruction given at the city's request. The Supreme Court, however, examined the plaintiff's case and found that on plaintiff's evidence the city was not liable so that the judgment below was affirmed, the court saying (pp. 649, 650):

> "Counsel for plaintiff contends that instruction numbered 5, given for the city, is erroneous and inconsistent with instruction numbered 1, given for the plaintiff. In view of the verdict on the facts disclosed by the evidence, we deem it unnecessary to set out these instructions, for the reason that upon the evidence the court ought to have directed a verdict for the defendant city, and the judgment in its favor being for the right party, ought not to be reversed for error in the instructions."

The syllabus to the case of *Vinson* v. *Scott,* 198 Ill., 542, accurately summarizes the rule:

"Where the jury could have rendered no other verdict under the evidence properly admitted, the judgment will not be reversed because of the admission of irrelevant evidence, or error in giving and refusing instructions."

Similarly, in *Columbus State Bank* v. *Carrig,* 3 Neb., 592 (unofficial), 92 N. W., 324, and in *Cowen* v. *Eartherly Hardware Co.,* 95 Ala., 324, it is held that where the plaintiff is entitled to an instructed verdict any errors in the instructions given are not material.

No principle is more firmly established than the one that a lower court which has ruled correctly will not be reversed because it assigned the wrong reason for its action. If the decision of the trial court was correct, the Court of Appeals properly affirmed that judgment though for reasons different from those relied upon by the lower court. The appellate court may itself give entirely new grounds for affirming the judgment below on the entire case.

Myers v. *Hale,* 17 Mo. App., 204;
Vaughan v. *Daniels,* 98 Mo., 230.

In the case at bar the plaintiff has suffered an actual loss, unquestioned by the defendant (Record, p. 30), of the amount awarded her by the trial court. The Kansas City Court of Appeals has held that the defendant failed to prove the facts necessary to limit its liability for the loss thus sustained. We submit that the decision of that court is correct, and we respectfully ask that the writ of error issued herein

be dismissed, or, if this court shall take jurisdiction of this cause, that the judgment of the state court be affirmed.

Respectfully submitted,

JUSTIN D. BOWERSOCK,
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Attorneys for the Defendant in Error.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY *v.* BEAHAM.

ERROR TO THE KANSAS CITY COURT OF APPEALS, STATE OF MISSOURI.

No. 118. Argued November 16, 1916.—Decided December 4, 1916.

When a passenger claims damages from a carrier for the loss of baggage accepted by the carrier for transportation between States, the rights and liabilities of the parties depend upon the Acts of Congress, the agreement of the parties and the common-law principles accepted and enforced by the federal courts.

In such case, the carrier is entitled to the presumption that its business was being rightfully conducted.

Where a stipulation, limiting a carrier's liability for baggage unless its value is stated and an extra charge paid, is printed on the face of a ticket as an ingredient of the ticket contract, and is, in substance, reiterated on a baggage check, one who, purchasing the ticket, employs it at once in checking baggage, receives the check and accepts and uses both ticket and check without objection, may be presumed to have assented to the stipulation, although he did not read it.

As bearing on its baggage liability, an interstate carrier has a right to put in evidence applicable tariff schedules on file with the Interstate Commerce Commission, and to have them duly considered by the court.

In an action over lost baggage, copies of tariff schedules on file with

the Interstate Commerce Commission, certified by its Chairman, and containing clauses limiting baggage liability, were offered by the defendant and received in evidence notwithstanding objection to the mode of certification. Judgment having been rendered on the theory that the limitation could not bind the plaintiff without her assent, the court below, on appeal, though holding such theory erroneous, affirmed the judgment upon the ground that the certification was insufficient and the copies therefore inadmissible. *Held*, that, whether the certification was sufficient or not, it was error to affirm the judgment and thus foreclose the defendant from protecting itself by introducing other evidence on a new trial.

THE case is stated in the opinion.

Mr. Albert S. Marley, with whom *Mr. John S. Marley* and *Mr. Robert J. Cary* were on the brief, for plaintiff in error.

Mr. Justin D. Bowersock, with whom *Mr. Robert B. Fizzell* was on the briefs, for defendant in error.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

At its New York City Station, in September, 1910, Miss Beaham purchased of plaintiff in error a first class ticket over its own and connecting lines on the face of which was printed—"Issued by the New York Central & Hudson River Railroad. Good for one passage of the class indicated on coupons attached to Kansas City, Missouri, when stamped and sold by an agent holding written authority as prescribed by law, and presented with coupons attached. Subject to the following Contract: . . . 5. Baggage liability is limited to wearing apparel not to exceed one hundred (100) dollars in value for a whole ticket and fifty (50) dollars for a half ticket unless a greater value is declared by the owner, and excess charge thereon paid at the time of taking passage."

Immediately after purchasing the ticket she presented it at the baggage department; her trunk was received for transportation; and she accepted a check or receipt therefor upon which were the words—"See conditions on back. Value not stated." On the back this was printed—"Notice to Passengers. Baggage consists of a passenger's personal wearing apparel and liability is limited to $100 (except a greater or less amount is provided in tariffs) on full fare ticket, unless a greater value is declared by owner at time of checking and payment is made therefor."

The trunk and contents having been lost she sued plaintiff in error for their full value in the Circuit Court, Jackson County, Missouri. Admitting responsibility for one hundred dollars the company claimed exemption from any larger recovery because of limitations specified in the ticket and impliedly assented to when it was accepted and used; and also because of the same limitations embodied in its tariff schedules filed with the Interstate Commerce Commission.

A jury being waived the cause was tried by the court. Acceptance and use of both ticket and check were shown and nothing in the evidence indicated any purpose to deceive or mislead the purchaser or inability on her part to appreciate the provisions in question; she disclaimed having read them and denied their validity under general principles of law. Counsel for the railroad offered in evidence copies of its tariff schedules on file with the Interstate Commerce Commission, certified by the Chairman of that body. These contained clauses limiting liability for baggage to one hundred dollars unless greater value was declared and paid for; and they were admitted notwithstanding an objection to mode of their authentication.

The Circuit Court held no agreement limiting liability resulted from acceptance and use of ticket and check,

and that, "even if the local and interstate tariffs of excess baggage rates introduced in evidence were filed with the Interstate Commerce Commission of the United States, and properly posted as required by the Interstate Commerce Act, still plaintiff would be entitled to recover the reasonable value of her trunk and the reasonable value of the articles of baggage contained therein, unless she expressly assented to the provisions of said tariffs limiting the liability of the defendant to $100 for loss of baggage unless a greater value should be declared and paid for." A judgment for $1771.52 was affirmed by the Kansas City Court of Appeals. It held that *Boston and Maine Railroad* v. *Hooker*, 233 U. S. 97, would necessitate a reversal but for the fact that the record contained no competent evidence to show a schedule on file with the Commission specifying liability for baggage; "the Federal statute provides that copies of tariff rates on file with that commission, shall be received in evidence, if certified by the Secretary, under the seal of the commission," and certification by the Chairman is insufficient. It therefore wholly disregarded the copies in the record and treated the cause as though they had not been introduced.

The transactions in question related to interstate commerce; consequent rights and liabilities depend upon acts of Congress, agreement between the parties, and common law principles accepted and enforced in federal courts. And the carrier is entitled to the presumption that its business is being conducted lawfully. *Southern Express Company* v. *Byers*, 240 U. S. 612, 614; *Cincinnati, New Orleans & Texas Pacific Railway Co.* v. *Rankin*, 241 U. S. 319, 326.

In the circumstances disclosed, acceptance and use of the ticket sufficed to establish an agreement *prima facie* valid which limited the carrier's liability. Mere failure by the passenger to read matter plainly placed before her

could not overcome the presumption of assent. *Railroad Company* v. *Fraloff*, 100 U. S. 24, 27; *The Kensington*, 183 U. S. 263; *Phineas Fonseca* v. *Cunard Steamship Co.*, 153 Massachusetts, 553.

In order to determine the liability assumed for baggage it was proper to consider applicable tariff schedules on file with the Interstate Commerce Commission; and the carrier had a federal right not only to a fair opportunity to put these in evidence but also that when before the court they should be given due consideration. *Southern Express Company* v. *Byers*, 240 U. S. 614; *Kansas City Southern Railway Co.* v. *Jones*, 241 U. S. 181. After their admission in evidence by the trial court the schedules could not be disregarded arbitrarily without denying the railroad's federal right; and we think they were so treated by the Court of Appeals. We are cited to no decision of the Supreme Court of Missouri recognizing any settled rule of practice there which required such action and the unjust consequences of it are apparent. Assuming, without deciding, the correctness of its opinion that the schedules as certified were inadmissible and improperly received, nevertheless the court should not have destroyed the carrier's opportunity to protect itself by introducing other evidence upon a new trial.

Reverse and remand for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE PITNEY dissents.